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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2008–0037]

Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing Minnesota from the list of modified accredited advanced States and adding it to the list of modified accredited States. This action is necessary to help prevent the spread of tuberculosis because Minnesota no longer meets the requirements for modified accredited advanced State status.

DATES: This interim rule is effective April 9, 2008. We will consider all comments that we receive on or before June 9, 2008.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0037* to submit or view comments and to view supporting and related materials available electronically.

Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2008–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0037.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Building B, MSC 3–E–20, Fort Collins, CO 80526–8117; (970) 494–7378.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. Prior to this interim rule, Minnesota was designated as a modified accredited advanced State.

The regulations in § 77.5 define a modified accredited advanced State or zone as a State or zone in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for each of the most recent 2 years. That definition does provide, however, that a State or zone with fewer than 30,000 herds may have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone. As a State with approximately 21,300 herds, according to data for 2007 obtained from the National Agricultural Statistics Service, Minnesota had been able to retain its modified accredited advanced status despite the detection of 3 tuberculosis-affected herds since October 2007. However, the recent detection of a fourth tuberculosis-affected herd means that Minnesota no longer qualifies for modified accredited advanced status. Therefore, we are amending the regulations by removing Minnesota from the list of modified accredited advanced States or zones and adding it to the list of modified accredited States or zones in § 77.11.

The four affected herds detected in the State have been quarantined, and a complete epidemiological investigation into the potential sources of the disease is being conducted.

Under the regulations in § 77.12, cattle or bison that originate in a modified accredited State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved

interstate only under one of the following conditions:

The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.12(a));

The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification; and are accompanied by a certificate stating that they were classified negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.12(b));

The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.12(c)); or

The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by a certificate stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 60 days following the whole herd test (§ 77.12(d)).

Minnesota has indicated that it intends to pursue zone classification, or split-State status, under §§ 77.3 and 77.4 of the regulations, and APHIS is initiating a risk assessment to assist in our evaluation of such a request. That risk assessment will be made available as a supporting document for any future rulemaking we undertake to recognize a zone within Minnesota.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of tuberculosis in the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to evaluate the potential economic effects of their regulatory actions on small businesses, small organizations and small governmental jurisdictions. This initial regulatory flexibility analysis examines expected impacts for small entities in Minnesota as a result of this interim rule that amends the State's bovine tuberculosis status from modified accredited advanced to modified accredited. We invite comments about this rule as it relates to small entities.

Reason for the Action

Because of increased incidence of bovine tuberculosis, Minnesota no longer qualifies for modified accredited advanced status. It is necessary to reclassify the State as modified accredited and conduct the additional disease prevention measures required by that reclassification in order to mitigate the spread of bovine tuberculosis to other States.

Objectives and Legal Basis for the Rule

The objective of the rule is to limit the spread of tuberculosis from Minnesota to other States. APHIS' authority to carry out operations and measures to detect, control, or eradicate bovine tuberculosis is the Animal Health Protection Act (7 U.S.C. 8301–8317).

A Description of and Estimate of the Number of Small Entities to Which the Rule Will Apply

The cattle industry plays an important role in Minnesota's economy. There were 21,300 cattle and calf operations (herds) in Minnesota in 2007, with a total inventory of 2.4 million head on January 1, 2008.[1] Cash receipts from cattle and calves and dairy products totaled $925.5 million and $1,073.7 million, respectively, in 2006, the latest year for which these data are available. Seven-year average receipts for cattle and calves and dairy products between 2000 and 2006 were $944 million and $1,162 million, respectively, for an average total of $2.1 billion.[2]

The vast majority of cattle operations in Minnesota (99 percent, or over 21,000 enterprises) are small entities that have annual receipts of not more than $750,000. The composition of Minnesota's cattle inventory is shown in Table 1.

TABLE 1.—MINNESOTA'S CATTLE INVENTORY BY TYPE: JANUARY 1, 2008

Type	Number	Percentage of total
Beef cows	397,000	16.5
Milk cows	463,000	19.3
Heifers:		
Beef cow replacements	100,000	4.2
Milk cow replacements	270,000	11.3
Other heifers	175,000	7.3
Total heifers	545,000	22.7
Steers	445,000	18.5
Bulls	40,000	1.7
Calves	510,000	21.3
Total	2,400,000	100.0

Source: USDA/NASS. *http://usda.mannlib.cornell.edu/usda/current.Catt/Catt-02-01-2008.pdf.*

[1] USDA/NASS. *http://usda.mannlib.cornell.edu/usda/current.Catt/Catt-02-01-2008.pdf.*

[2] USDA/ERS, Farm Income: Annual Cash Receipts, 1924–2006: Table 5—Cash Receipts, by Commodity Groups and Selected Commodities, Minnesota, 2000–2006.

A Description of Compliance Requirements and Expected Effects of the Rule

Minnesota's bovine tuberculosis status has been modified accredited advanced. This interim rule amends the State's status to modified accredited. As a result of this action, herd owners are expected to be negatively affected. The additional requirements for movement of cattle as a result of the change in tuberculosis status are shown in Table 2. As shown, no additional requirements are placed on animals moving directly to slaughter or those moving from an accredited herd. Intact heifers moved interstate to an approved feedlot and steers and spayed heifers moved interstate will require certification and testing within 60 days of movement (60-day test). Also, intact animals (that is, beef and milk cows that have calved, beef and milk cow replacements and bulls) from a herd without accredited status will require a whole herd test within the previous 12 months and a negative 60-day test prior to interstate movement. If the intact animals are moved within 60 days of the whole herd test, they do not require an additional test. Thus, owners of non-accredited herds that move intact animals or steers and spayed heifers interstate will bear additional costs because of Minnesota's loss of modified accredited advanced status.

TABLE 2.—A COMPARISON OF REQUIREMENTS FOR INTERSTATE MOVEMENT FROM STATES OR ZONES HAVING MODIFIED ACCREDITED ADVANCED STATUS AND MODIFIED ACCREDITED STATUS

Type of cattle and movement [a]	Modified accredited advanced status	Modified accredited status
All types moved directly to slaughter at an approved slaughtering establishment.	No test required	No test required.
Intact heifers moved to an approved feedlot[b]	Official ID only	Official ID, certificate of negative 60-day test.
Steers and spayed heifers[c]	Official ID only	Official ID, certificate of negative 60-day test.
Cattle from an accredited herd[d]	Certificate that herd was tested within 1 year of movement.	Certificate that herd was tested within 1 year of movement.
Intact cattle from a herd without accredited status.	Official ID, certificate of negative 60-day test	Official ID, certificates of negative whole herd test within previous 12 months and negative 60-day test; 60-day test not required if moved within 60 days of the whole herd test.

Source: 9 CFR 77.10 and 77.12.
[a] The movement requirements apply also to bison.
[b] Currently, there are no approved feedlots (facilities that handle high risk animals) in the United States.
[c] There are few, if any, spayed heifers in Minnesota.
[d] There are no accredited herds in Minnesota.

Tuberculosis testing, including veterinary fees, completion of certificate forms and handling expenses, costs about $10 to $15 per test. Based on the above information, all steers and intact heifers moved interstate but not directly to slaughter will need certification of a negative 60-day test, and the intact animals from herds without accredited status that move interstate will need a whole herd test and a 60-day test unless moved within the first 60 days following the whole herd test. In estimating what these testing costs may total for Minnesota's cattle producers, and the extent to which small entities may be affected, we have assumed that the change in bovine tuberculosis status will affect all Minnesota herds. We recognize that this assumption overstates the probable number of herds affected, since movement of cattle within Minnesota will not be impacted. However, we also note that there are other marketing costs attributable to the change in status that are not quantified in this analysis; namely, a price discount incurred by sellers of cattle that originate from a State or zone of lower status.

According to National Agricultural Statistics Service (NASS) data, about 32 percent of Minnesota's cattle were moved directly to slaughter in 2007.[3] We do not know the percentage of cattle moved directly to slaughter by class, but assume that the 32 percent is representative for steers. Thus, there will be 302,600 steers (445,000 head × 0.68) that will require certification of a negative 60-day test prior to interstate movement. Applying the above testing costs per animal yields a total annual cost for testing steers of between $3,026,000 (302,600 head × $10 per head) and $4,539,000 (302,600 head × $15 per head).

Assuming that 32 percent of the ''Other Heifers'' shown in Table 1 are moved directly to slaughter implies that 119,000 intact heifers (175,000 head × 0.68) from this category will require a negative individual 60-day test if these heifers are moved more than 60 days after their herd of origin has had a whole herd test. We also assume that 85 percent of the intact replacement heifers are moved interstate (with operators retaining 15 percent, on average). These heifers number 314,500 (370,000 head × 0.85). Because intact heifers may be moved interstate within 60 days of the whole herd test of their herd of origin, there will be a 10-month period in which intact heifers will require the 60-day test. We estimate that 361,250 intact heifers ([119,000 head + 314,500 head] × 10/12) will require the additional 60-day test each year. Applying the estimated testing costs per animal of $10 to $15, the 60-day test will result in a total annual cost of between $3,612,500 and $5,418,750.

As stated above, there are approximately 21,300 cattle and bison herds or operations in Minnesota with a total of 2.4 million animals or with an average number of 113 animals per herd. In order to be eligible for interstate movement, intact cattle or bison must originate from a herd that has had a whole herd test within 1 year prior to the date of interstate movement. Additionally, all dairies must have a whole herd test annually to comply with the Pasteurized Milk Ordinance (PMO) unless an approved surveillance plan is in place within the State. Assuming that all cattle operations will desire the ability to move their cattle or bison to any other State or zone, or be required to test to comply with PMO, every herd in the State will need to conduct a whole herd test on an annual basis.

A whole herd test requires the testing of all animals in a herd that are 12 months of age and older at the time of

[3] USDA/NASS, Livestock Slaughter, 2007 Summary, March 2008.

the test. Calculating a 90 percent yearly calf crop results in an adult population of 60 animals over 12 months of age in the average herd (113 head) in any given year. Based on the 21,300 herds in Minnesota, this results in a total number of 1,278,000 intact cattle (21,300 herds × 60 adult cattle per herd) that will require a whole herd test each year. Assuming, as above, the $10 to $15 cost per head, the total cost for whole herd testing is estimated to be between $12,780,000 and $19,170,000. These cost estimates may be high because the cost of whole herd testing on a per-animal basis is generally less than the cost of testing animals individually 60 days prior to interstate movement.

By conducting the whole herd test within 60 days prior to interstate movement of the intact cattle, producers will not incur the cost of a 60-day test. They may, in fact, derive savings from the difference between the testing costs per animal when conducted individually and when conducted as part of a whole herd test.

Combining the estimated testing costs for interstate movement of steers and intact heifers and for whole herd testing, we find that Minnesota's loss of modified accredited advanced status may cost its cattle producers between $19.4 million and $29.1 million annually due to the additional bovine tuberculosis testing that is required.

Based on the 2002 Census of Agriculture, there were 22,830 small-entity producers in Minnesota (99 percent of all cattle holdings) that sold a total of 1,068,393 head of cattle (78.8 percent of total sales). They had an average annual income of about $29,400 in 2002. The remaining one percent of producers had sales of 287,749 animals and an average annual income of about $1,540,890. As shown in Table 3, the impact of Minnesota's loss of modified accredited advanced status on its small-entity producers may average more than $1,000 per operation. This amount is equal to about 3.4 percent of average annual sales by small entities in 2002 when based on the upper range of bovine tuberculosis testing costs ($15 per animal tested).

TABLE 3.—THE ESTIMATED COST OF MINNESOTA'S LOSS OF MODIFIED ACCREDITED ADVANCED STATUS FOR SMALL ENTITIES

Total cost of testing [a]	$29.1 million.
The cost to small entities [b]	$22.9 million.
Average cost per small entity [c]	$1,003.
Average cost per small entity as a percentage of average sales per small entity [d]	3.4%.

[a] From the text, assuming an individual bovine tuberculosis testing cost of $15 per head.
[b] Total testing cost multiplied by 78.8 percent, the percentage of cattle and calves sold by producers with annual revenues of not more than $750,000, that is, small entities. We assume that the total cost of tuberculosis testing incurred by small entities is proportional to their share of the State's total cattle sales.
[c] Total cost for small entities divided by the number of small entities (22,830 producers, based on 2002 Census of Agriculture data).
[d] Average cost per small entity as a percentage of the average annual revenue per small entity ($29,400, based on 2002 Census of Agriculture data).

Duplication, Overlap, or Conflict With Other Rules

APHIS has not identified any Federal rules that are duplicative, overlapping, or conflicting with this rule.

Description of Any Significant Alternatives to the Rule

APHIS has determined that there are no significant alternatives to the interim rule that would accomplish the stated objectives and minimize impacts for small entities.

Summary

This analysis examines impacts for Minnesota's small entities of that State's loss of modified accredited advanced status. The State's producers of cattle and calves are predominantly small entities. Those producers who move steers, intact heifers or intact adult cattle out-of-state for breeding or feeding purposes will incur increased costs as a result of the change in bovine tuberculosis status. The additional testing costs may average as much as 3.4 percent of the value of annual sales by small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.9 [Amended]

■ 2. In § 77.9, paragraph (a) is amended by removing the word ''Minnesota'' and adding the word ''None'' in its place.

§ 77.11 [Amended]

■ 3. In § 77.11, paragraph (a) is amended by removing the word ''None'' and adding the word ''Minnesota'' in its place.

Done in Washington, DC, this 3rd day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–7346 Filed 4–8–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29372; Airspace Docket No. 07–ASW–9]

Establishment of Class D Airspace; New Braunfels, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class D airspace at New Braunfels, Texas. Establishment of an air traffic control tower at New Braunfels Municipal Airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) aircraft operations at New Braunfels Municipal Airport, New Braunfels, Texas.

DATES: *Effective Date:* 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, AMTI CTR, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Ft Worth, Texas, 76193–0530; at telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at New Braunfels, Texas (72 FR 71606).

This action would improve the safety of IFR aircraft at New Braunfels Municipal Airport, New Braunfels, Texas. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR, part 71.1. The Class D airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR), part 71 by establishing Class D airspace at New Braunfels, Texas. A new air traffic control tower has been installed at New Braunfels Municipal Airport, making this action necessary for the safety and management of IFR aircraft operations at the airport.

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. Therefore, this regulation: (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 U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 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 establishes controlled airspace at New Braunfels Municipal Airport, New Braunfels, Texas.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (AIR).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASW TEXAS D New Braunfels, Texas [New]

New Braunfels Municipal Airport, Texas (Lat. 29°42′16″ N., long. 98°02′32″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.1-mile radius of New Braunfels Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas, on March 28, 2008.

Richard H. Farrell, III,

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

[FR Doc. E8–7094 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0004; Airspace Docket No. 08–ASW–2]

Proposed Establishment of Class E Airspace; Huntsville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of the direct final rule that establishes Class E airspace at Huntsville Municipal Airport, Huntsville, Arkansas, published in the **Federal Register** February 15, 2008 (73 FR 8794) Docket No. FAA–2008–0004.

DATES: *Effective Dates:* 0901 UTC April 10, 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.

SUPPLEMENTARY INFORMATION:

History

The FAA published a direct final rule with request for comments in the **Federal Register** February 15, 2008 (73 FR 8794), Docket No. FAA–2008–0004. The FAA uses the direct final rule procedure for non-controversial rules where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit an adverse comment, was received within the comment period, the regulation would become effective on April 10, 2008. No adverse comments were received; thus, this notice confirms that the direct final rule will become effective on this date.

* * * * *

Issued in Fort Worth, TX, on March 31, 2008.

Walter Tweedy,

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

[FR Doc. E8–7248 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1155; FRL–8548–8]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Updated Statutory and Regulatory Provisions; Rescissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, EPA is approving certain revisions, and disapproving certain other revisions, to the Nevada state implementation plan. These revisions were the subject of a proposed rule published in the **Federal Register** on December 14, 2007. The provisions that EPA is approving include certain definitions; prohibitory rules; provisions related to legal authority and enforcement; rules establishing opacity, sulfur and volatile organic compounds limits; and rescission of abbreviations. EPA is disapproving the rescission of a certain definition and the rescission of a rule related to emission discharge information. EPA is taking this action under the Clean Air Act obligation to take action on submittals of revisions to state implementation plans. The effect of this action is to update the Nevada state implementation plan with amended or recodified rules and to rescind a provision found to be unnecessary for further retention in the plan.

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

ADDRESSES: EPA has established docket number EPA–R09–OAR–2007–1155 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov*.

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

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I. Proposed Action

On December 14, 2007 (72 FR 71095), under the Clean Air Act (CAA or ''Act''), EPA proposed approval of certain revisions, and disapproval of certain other revisions, to the Nevada state implementation plan (SIP) that had been submitted by the Nevada Division of Environmental Protection (NDEP) on January 12, 2006 and June 26, 2007.

Specifically, in our December 14, 2007 action, we proposed to approve the amended rules or statutory provisions shown in table 1. In today's document, we are taking final action on the provisions in table 1 as we had proposed on December 14, 2007, except for NRS 445B.310 for which we take no action today, as explained below. The provisions listed in table 1 replace early 1980's versions of these provisions. We proposed to approve the provisions in table 1 based on our review of applicable CAA and EPA regulatory requirements and a comparison of the provisions with the corresponding existing SIP provisions that they would replace. In general, we found that the submitted provisions mirror the corresponding provisions in the existing SIP or strengthen the SIP by eliminating exceptions, deleting limitations, or expanding legal authority, and on that basis, found that they would not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS).

With respect to public participation requirements under CAA section 110(l), in our December 14, 2007 proposed rule, we found that adequate documentation had been submitted by NDEP (or otherwise acquired by EPA) to show compliance with CAA procedural requirements for SIP revisions under CAA section 110(l) except for NRS 445B.310. Thus, we made our proposed approval of NRS 445B.310 contingent upon receipt of documentation of notice and opportunity for public hearing on adoption of NRS 445B.310 as a revision to the Nevada SIP. We have not received this documentation and thus are not taking final action on NRS 445B.310 in this document.

TABLE 1.—SUBMITTED RULES AND STATUTORY PROVISION

Submitted NAC or NRS	Title	Adoption date	Submittal date
NAC 445B.172	''Six-Minute Period'' defined	09/16/76	06/26/07
NAC 445B.190	''Stop order'' defined	11/03/93	06/26/07
NAC 445B.220	Severability	09/06/06	06/26/07
NAC 445B.225	Prohibited conduct: Concealment of emissions	10/03/95	06/26/07
NAC 445B.227	Prohibited conduct: Operation of source without required equipment; removal or modification of required equipment; modification of required procedure.	10/03/95	01/12/06
NAC 445B.229	Hazardous emissions: Order for reduction or discontinuance	10/03/95	06/26/07
NAC 445B.275	Violations: Acts constituting; notice	03/08/06	06/26/07
NAC 445B.277	Stop orders	03/08/06	06/26/07

TABLE 1.—SUBMITTED RULES AND STATUTORY PROVISION—Continued

Submitted NAC or NRS	Title	Adoption date	Submittal date
NRS 445B.310	Limitations on enforcement of federal and state regulations concerning indirect sources.	No adoption date	06/26/07

In our December 14, 2007 proposed rule, we proposed action on three rules (listed in table 2, below) that NDEP seeks to rescind from the existing SIP. NDEP's rescissions of NAC 445.655 and NAC 445.694 are included in a January 12, 2006 SIP submittal, and NDEP's rescission of NAC 445.436 is included in a June 26, 2007 SIP submittal. In our proposed rule, we proposed to disapprove the rescission of NAC 445.436 (''Air contaminant' defined'') because it is relied upon by certain SIP rules that remain in the applicable SIP. We proposed to approve the rescission of NAC 445.655 (''Abbreviations'') because the abbreviations listed therein that are not simply superseded by our approval of the current version of the rule (i.e., NAC 445B.211 (''Abbreviations''), approved on March 27, 2006 at 71 FR 15040) are not relied upon by any rules in the applicable SIP. Lastly, with respect to NAC 445.694 (''Emission discharge information''), we proposed to disapprove the rescission because we found that the rule is needed to comply with requirements under 40 CFR 51.116(c). We are taking final action in today's document on the requested rescissions listed in table 2 as we had proposed on December 14, 2007.

TABLE 2.—REQUESTED RESCISSIONS

SIP rule	Title	Submittal date	Approval date
NAC 445.436	''Air contaminant'' defined	10/26/82	06/26/84
NAC 445.655	Abbreviations	10/26/82	06/26/84
NAC 445.694	Emission discharge information	10/26/82	06/26/84

In our December 14, 2007 proposed rule, we proposed to approve rule recodifications submitted by NDEP to EPA on June 26, 2007 to replace corresponding SIP rules recently approved by EPA in the Nevada SIP (see table 3). The recodified rules reflect the January 2007 update to chapter 445B of the Nevada Administrative Code (NAC), as published by the Nevada Legislative Counsel Bureau. On the basis of a comparison of the rule recodifications submitted by NDEP and listed in table 3 above with the corresponding SIP rules, we found all of the changes, which include revised titles and updates to internal rule references and historical notes, to be administrative in nature and acceptable. Therefore, we are taking final action in today's document to approve the rule recodifications listed in table 3 as proposed on December 14, 2007.

TABLE 3.—SUBMITTED RULE RECODIFICATIONS

Recodified rule	Title	Submittal date
NAC 445B.001	Definitions	06/26/07
NAC 445B.063	''Excess emissions'' defined.	06/26/07
NAC 445B.153	''Regulated air pollutant'' defined	06/26/07
NAC 445B.22017	Visible emissions: Maximum opacity; determination and monitoring of opacity	06/26/07
NAC 445B.2202	Visible emissions: Exceptions for stationary sources	06/26/07
NAC 445B.22043	Sulfur emissions: Calculation of total feed sulfur	06/26/07
NAC 445B.2205	Sulfur emissions: Other processes which emit sulfur	06/26/07
NAC 445B.22093	Organic solvents and other volatile compounds	06/26/07

Our December 14, 2007 proposed rule and related technical support document (TSD) provide additional background information and a more detailed rationale for our actions summarized above.

II. Public Comments

EPA's December 14, 2007 proposed rule provided a 30-day public comment period. No comments were submitted.

III. EPA Action

As authorized under section 110(k) of the Act, and for the reasons described above and in our proposed rule, EPA is approving certain revisions, and disapproving certain other revisions, to the Nevada SIP submitted by NDEP on January 12, 2006 and June 26, 2007. Specifically, we are approving the provisions listed in table 1, above, except for NRS 445B.310; we are approving the rescission of NAC 445.655 (''Abbreviations''); and we are approving the rule recodifications listed in table 3, above.[1] We are disapproving the rescissions of NAC 445.436 (''Air contaminant'' defined) and NAC 445.694 (''Emission discharge information''). We will take final action on our proposed approval of NRS 445B.310 in a separate document upon receipt of documentation of notice and opportunity for public hearing on

[1] Upon the effective date of today's final rule, the following provisions will be superseded in the applicable SIP upon the established compliance date for any new or amended requirements in the superseding provisions (superseding rules from table 1 shown in parentheses): NAC 445.617 (NAC 445B.172), NAC 445.630 (NAC 445B.190), NAC 445.660 (NAC 445B.220), NAC 445.663 (NAC 445B.225), NAC 445.664 (NAC 445B.227), NAC 445.665 (NAC 445B.229), NAC 445.696 (NAC 445B.275), and NAC 445.697 (NAC 445B.277). Also, upon the effective date of this final rule, the rule recodifications listed in table 3 of this document will supersede existing SIP rules with the same section number in NAC chapter 445B.

adoption of NRS 445B.310 as a revision to the Nevada SIP.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves state law implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

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

List of Subjects in 40 CFR part 52

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

Dated: January 24, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by:
■ a. Adding paragraph (c)(25)(v);
■ b. Revising paragraph (c)(56)(i)(A)(*3*)(*i*); and
■ c. Adding paragraph (c)(66) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(25) * * *

(v) Previously approved on March 27, 1984, in paragraph (c)(25)(i)(A) of this section and now deleted without replacement: Nevada Administrative Code (NAC) section: 445.655.

* * * * *

(56) * * *

(i) * * *

(A) * * *

(*3*) * * *

(*i*) October 3, 1995: 445B.005, 445B.059, 445B.077, 445B.112, 445B.116, 445B.130, 445B.145, 445B.152, 445B.177, 445B.180, 445B.22037, and 445B.227.

* * * * *

(66) The following plan revision was submitted on June 26, 2007 by the Governor's designee. All section citations listed below refer to the January 2007 codification of chapter 445B of the Nevada Administrative Code as published by the Nevada Legislative Counsel Bureau.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) The following section of the Nevada Air Quality Regulations was adopted on the date listed below and recodified as Chapter 445B of the Nevada Administrative Code in November 1994:

(*i*) September 16, 1976, effective date December 4, 1976: 445B.172, ''Six-Minute Period defined.''

(*2*) The following section of Chapter 445 of the Nevada Administrative Code was adopted on the date listed below and recodified as Chapter 445B of the Nevada Administrative Code in November 1994:

(*i*) November 3, 1993: 445B.190, ''Stop order defined.''

(*3*) The following sections of Chapter 445B of the Nevada Administrative Code were adopted on the dates listed below:

(*i*) October 3, 1995: 445B.225, ''Prohibited conduct: Concealment of

emissions;'' and 445B.229, ''Hazardous emissions: Order for reduction or discontinuance.''

(*ii*) August 19, 2004, effective date September 24, 2004: 445B.001, ''Definitions;'' 445B.22043, ''Sulfur emissions: Exceptions for stationary sources;'' and 445B.2205, ''Sulfur emissions: Other processes which emit sulfur.''

(*iii*) October 4, 2005: 445B.063, ''Excess emissions defined;'' 445B.153, ''Regulated air pollutant defined;'' 445B.22017, ''Visible emissions: Maximum opacity; determination and monitoring of opacity;'' 445B.2202, ''Visible emissions: Exceptions for stationary sources;'' and 445B.22093, ''Organic solvents and other volatile compounds.''

(*iv*) March 8, 2006: 445B.275, ''Violations: Acts constituting; notice;'' and 445B.277, ''Stop orders.''

(*v*) September 6, 2006: 445B.220, ''Severability.''

* * * * *

[FR Doc. E8–7046 Filed 4–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0433; FRL–8357–5]

1-Methylcyclopropene; Amendment to an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an amendment to an exemption from the requirement of a tolerance for residues of the 1-Methylcyclopropene (1-MCP) on fruits and vegetables when applied or used outdoors for pre-harvest treatments. Agrofresh Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an amendment to the existing 1-MCP exemption from the requirement of a tolerance at 40 CFR 180.1220. This regulation eliminates the need to establish a maximum permissible level for residues of 1-Methylcyclopropene.

DATES: This regulation is effective April 9, 2008. Objections and requests for hearings must be received on or before June 9, 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–2007–0433. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in 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: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 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, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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–2007–0433 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 on or before June 9, 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 your copies, identified by docket ID number EPA–HQ–OPP–2007–0433, 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. Background and Statutory Findings

In the **Federal Register** of August 8, 2007 (72 FR 44520) (FRL–8138–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7170) by Agrofresh, Inc., 100 Independence Mall, Philadelphia, PA 19106–2399. The petition requested that 40 CFR 180.1220 be amended to include residues resulting from outdoor pre-harvest use of 1-Methylcyclopropene. This notice included a summary of the petition prepared by the petitioner Agrofresh, Inc. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require 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.... '' Additionally, section 408(b)(2)(D) of FFDCA requires that 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

1-Methylcyclopropene (1-MCP) is a plant regulator known for inhibiting ripening and aging of plants, flowers, fruits, and vegetables caused by the production of ethylene. 1-MCP acts by blocking the attachment of ethylene to tissue, and thus, prolonging the life of the food commodity treated. This mode of action is not relevant in animals, since ethylene receptors are not present in animal tissues.

The toxicity profile of 1-MCP has already been assessed by the Agency for its pesticidal use and in support of the tolerance exemption for post-harvest use in or on fruits and vegetables. The final rule was published on July 26, 2002 (67 FR 48796)(FRL–7187–4). Comprehensive review of studies submitted and risk assessment conducted on 1-MCP with regard to its toxicity to human health, done in support of the current petition and the approved tolerance exemption for post-harvest usage, have all concluded that this compound has a low acute toxicity.

1. *Acute toxicity*. 1-MCP exhibits low acute toxicity for all routes of exposure. It is a category IV for acute oral, dermal, inhalation, eye and dermal irritations. Moreover, 1-MCP is not a skin sensitizer, and no hypersensitivity incidents were observed following exposure to 1-MCP.

2. *Genotoxicity*. 1-MCP was not mutagenic when tested in several short-term *in vitro*/*in vivo* assays, including a bacterial reverse mutation assay (Ames test), an *in vitro* mammalian point mutation assay in Chinese hamster ovary cells, an *in vitro* cytogenetics assay in human lymphocytes and an *in vivo* mouse micronucleus assay following inhalation exposure. In addition, 1-MCP is not mutagenic when tested as a suspension in cell media in the Ames test and in the *in vitro* mouse lymphoma forward mutation assay (MRID 444647–10) and is not mutagenic in the *in vivo* mouse micronucleus assay (MRID 444747–11) following oral exposure.

3. *Developmental toxicity*. 1-MCP produces no developmental toxicity when tested in a standard developmental toxicity study in the rat via inhalation at concentrations up to and including 2.3 milligram active ingredient/Liter (mg a.i./L) (or 543 mg a.i./kilogram (kg)/day, 6 hour (hr) exposure/day). The no observed adverse effect level (NOAEL) for maternal toxicity was 0.24 mg a.i./L (56 mg a.i./kg/day, 6 hr exposure/day).

4. *Subchronic toxicity*. 1-MCP was tested in a 90–day inhalation study at doses of 0.05, 0.24 and 2.3 mg a.i./kg in the rat. The NOAEL is 0.05 mg a.i./L (equivalent to 9 to 15 mg a.i./kg/day), based on minimal to mild effects on spleen and kidney histopathology at 0.24 mg a.i./L (equivalent to 39 to 66 mg a.i./kg/day). In this study there was no evidence of neurotoxicity, no effects on the respiratory tract and no effects on pathology of any endocrine or reproductive organs up to and including the highest dose tested of 2.3 mg a.i./L (or equivalent to 380 to 640 mg a.i./kg/day).

5. AgroFresh (the applicant) submitted a request to waive the immune response from the testing guidelines. A scientific rationale based on the current toxicological data submitted on 1-MCP was provided to address this data requirement. The review of the 3–month inhalation rat study (mentioned in the previous paragraph) indicates no effects on thymus weight and no effects on the histopathology of the thymus, bone marrow or spleen that would be attributed to an impact on the immune system were seen. There were no effects on white blood cell differential parameters (including monocytes, lymphocytes, segmented neutrophils or eosinophils) and no basophils were observed which may be indicative of an allergic reaction. The Agency concluded that 1-MCP did not induce dysfunction or inappropriate suppressive responses in components of the immune system. As a result, the Agency granted the request to waive immune response from the testing guidelines.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or

buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. The primary source for human exposure to 1-MCP will be from ingestion of raw and processed fruits and vegetables treated with 1-MCP before and after the harvest. Studies submitted, conducted in the field on apples (MRID 470886–12), maize (MRID 470886–11) and tomatoes (471082–03), showed residues in treated fruits to be extremely low. Moreover, harvested apples treated with 1-MCP in storage areas (MRID 456090–02), showed also low residue (average residue was 0.004 part per million (ppm) using an exaggerated treatment rate of 1,200 parts per billion (ppb) versus the 1,000 ppb proposed label rate). A worst-case scenario (using the 0.004 ppm average residue concentration found in treated apples and assuming that concentration is present in 100% of the diet regardless of crops treated) indicates that a daily diet of 1.5 kg/day could contain 0.006 mg 1-MCP. For the general population (assuming an average body weight of 60 kg), this would represent a daily intake of 0.0001 mg 1-MCP/kg body weight which is 90,000 to 150,000-fold less than the 9–15 mg/kg NOAEL indicated in the 90–day inhalation study. Residues in other treated commodities are expected to be similar or even lower since the highest treatment rate is recommended for apples. Processing would be expected to further lower the residue levels in processed food commodities.

2. *Drinking water exposure*. No significant drinking water exposure and residues are expected to result from the pesticidal use of 1-MCP when applied or used as directed on the label and in accordance with good agricultural practices. Moreover, review of the study for soil absorption (OPPTS 835.1220), showed that the field use of 1-MCP should not result in leaching of 1-MCP residues to ground water.

B. Other Non-Occupational Exposure

There are no residential, school or day care uses proposed for this product. Since the proposed use pattern is for agricultural food crops, the potential for non-occupational, non-dietary exposures to 1-MCP by the general population, including infants and children, is highly unlikely.

1. *Dermal exposure*. Non-occupational dermal exposures to 1-MCP when used as a plant regulator are expected to be negligible because it is limited to agricultural use.

2. *Inhalation exposure*. Non-occupational inhalation exposures to 1-MCP when used as a plant regulator are expected to be negligible because it is limited to agricultural use.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish an exemption from 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.'' These considerations include the possible cumulative effects of such residues on infants and children.

EPA has considered the potential for cumulative effects of 1-MCP and other substances in relation to a common mechanism of toxicity. 1-MCP cannot share a common mechanism of toxicity with other substances because this compound is not toxic to mammalian systems. Thus, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

A. U.S. Population

There is reasonable certainty that no harm will result from aggregate exposure to residues of 1-MCP to the U.S. population, infants, and children. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency arrived at this conclusion based on the low level of mammalian toxicity of 1-MCP and the already widespread exposure to 1-MCP when used on pre-harvested and post-harvested fruits and vegetable, without any reported adverse effects on human health. For these reasons, the Agency has determined that residues of 1-MCP from pre-harvest treatment of fruits and vegetables are safe, i.e., there is a reasonable certainty that no harm will result from aggregate exposure to such residues.

B. Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (also referred to as a 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 unless EPA determines that a different margin of exposure will be safe for infants and children. Margins of exposure are often referred to as uncertainty or safety factors. In this instance, based on all available information, the Agency concludes that 1-MCP is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children, and adults when 1-MCP is used as labeled, the provision requiring an additional margin of safety does not apply. As a result, EPA has not used a margin of exposure approach to assess the safety of 1-MCP.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.''

1-MCP is not known as an endocrine disruptor nor is it related to any class of known endocrine disruptors. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this final rule for1-MCP.

B. Analytical Method

Through this action, the Agency proposes to establish an exemption from the requirement of a tolerance for 1-MCP when used on fruit and vegetable crops. For the very same reasons that support the granting of this tolerance exemption, the Agency has concluded that an analytical method is not required for enforcement purposes for these proposed uses of 1-MCP.

C. Codex Maximum Residue Level

There are no codex maximum residue levels established for 1-MCP.

VIII. Conclusions

The Agency does not expect any human health concerns from exposure to residues of 1-MCP when applied or used as directed on the label and in accordance with good agricultural practices. The data submitted by applicant and reviewed by the Agency support the petition for an exemption from the requirement of a tolerance, for 1-MCP on pre-harvested fruits and vegetable, when the product is applied or used as directed on the label.

IX. 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 final rule has been exempted from review under

Executive Order 12866, 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) 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 9, 2000) do not apply to this final rule. In addition, this final 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).

X. 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 31, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention 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 180.1220 is revised to read as follows:

§ 180.1220 1-Methylcyclopropene; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the 1-Methylcyclopropene in or on fruits and vegetables when:

(a) Used as a post harvest plant growth regulator, i.e., for the purpose of inhibiting the effects of ethylene.

(b) Applied or used outdoors for pre-harvest treatments.

[FR Doc. E8–7458 Filed 4–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0303; FRL–8357–2]

Fenhexamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fenhexamid in or on asparagus. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 9, 2008. Objections and requests for hearings must be received on or before June 9, 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–2007–0303. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in 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: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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**.

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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–2007–0303 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 June 9, 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–2007–0303, 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 June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7187) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.553 be amended by establishing a tolerance for residues of the fungicide, fenhexamid, (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide), in or on asparagus at 0.02 parts per million (ppm). This notice referenced a summary of the petition prepared by Arysta LifeScience, 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.

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 residues of fenhexamid on asparagus at 0.02 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. In general, the toxicology studies conducted on fenhexamid demonstrated that it has few or no biologically significant toxic effects at relatively low dose levels in many animal studies and only mild or no toxic effects at high dose levels which often approach or exceed the limit dose. In subchronic and chronic oral studies, the most toxicologically significant effects were anemia in dogs, and decreased body weights, increased food consumption and mild liver and/or kidney effects in rats and mice. Fenhexamid is not acutely toxic, neurotoxic, carcinogenic, or mutagenic and is not a developmental or reproductive toxicant. Although no increased susceptibility of fetuses was demonstrated in developmental toxicity studies in rats and rabbits, equivocal results, with respect to evaluating potentially increased sensitivity of pups, were observed in the reproduction study in rats. Specific information on the studies received and the nature of

the adverse effects caused by fenhexamid 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 April 13, 2000 (65 FR 19842) (FRL–6553-7)*http://www.epa.gov/fedrgstr/EPA-PEST/2000/April/Day-13/p9144.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 fenhexamid used for human risk assessment can be found at *http://www.regulations.gov* in document *Fenhexamid Human Health Risk Assessment for a Proposed Section 3 Registration for Use on Asparagus* on pages 25-26 in docket ID number EPA–HQ–OPP–2007–0303.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fenhexamid, EPA considered exposure under the petitioned-for tolerances as well as all existing fenhexamid tolerances in (40 CFR 180.553). EPA assessed dietary exposures from fenhexamid in 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.

No such effects were identified in the toxicological studies for fenhexamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

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 assumed tolerance level residues for all commodities with existing and proposed tolerances, DEEM default processing factors, and assumed 100% crop treated.

iii. *Cancer*. Based on the studies of carcinogenicity studies in rats and mice, EPA has concluded that fenhexamid is ''not likely to be carcinogenic to humans.'' Consequently, a quantitative cancer exposure and risk assessment is not appropriate for fenhexamid.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for fenhexamid 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 fenhexamid. 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 environmental concentrations (EECs) of fenhexamid for surface water are estimated to be 29 parts per billion (ppb) for acute and 1.1 ppb for chronic exposure. The EECs for groundwater are estimated to be 0.0007 ppb for acute and chronic exposure.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 1.1 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).

Fenhexamid is not registered for use on any sites that would result in residential exposure.

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.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenhexamid and any other substances and fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold (''10X'') margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal 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. *Pre-natal and post-natal sensitivity*. In the rat and the rabbit developmental toxicity studies, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to fenhexamid was observed. In the rat reproduction study, qualitative susceptibility was evidenced as significantly decreased pup body weights in both generations during the lactation period (on lactation days 7, 14, and 21 in the F2 generation and lactation days 14 and 21 in the F1 generation offspring) in the presence of lesser maternal toxicity (alterations in clinical chemistry parameters and decreased organ weights without collaborative histopathology). Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for fenhexamid, the degree of concern for the effects observed in this study was characterized as low, noting that there is a clear NOAEL and well-characterized dose response for the offspring effects observed and that these effects occurred in the presence of parental toxicity. No residual uncertainties were identified. The NOAEL of 17 milligrams/kilograms day (mg/kg/day) from the chronic dog study used to establish the chronic Reference Dose (cRfD) for the General Population is lower than the NOAEL of 38.2 mg/kg/day in the reproduction study in which the offspring effects of concern were observed (LOAEL = 406 mg/kg/day), and is therefore protective of any potential offspring effects.

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 toxicology data base is complete; there are no residual uncertainties in the expose database.

ii. Developmental neurotoxicity studies are not required for fenhexamid, and no additional uncertainty factors are needed based on the following weight-of-the-evidence considerations:

The lack of evidence of abnormalities in the development of the fetal nervous system in the pre/post natal studies; and

Neither brain weight nor histopathological examination of the nervous system was affected in the subchronic and chronic studies. Decreased body temperatures observed in male rats in the acute neurotoxicity study were also not considered to be toxicologically significant.

iii. As discussed above in Unit III D., there are no residual uncertainties for pre and/or post natal sensitivity.

iv. The dietary (food) exposure assessment utilizes existing and proposed tolerance level residues and assumes 100% of crops treated with fenhexamid. The assessment is based on reliable data and is not expected to underestimate exposure/risk. Fenhexamid is not registered for use sites that would result in residential exposure. Conservative assumptions are used in the drinking water models. The drinking water exposure assessment is not expected to underestimate exposure/risk.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and 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*. No toxicological endpoint attributable to a single (acute) dietary exposure was identified. Therefore, acute risk from exposure to fenhexamid is not expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenhexamid from food and water will utilize 27% of the cPAD for children 1-2 years old, the subpopulation at the greatest exposure. There are no residential uses for fenhexamid that result in chronic residential exposure to fenhexamid.

3. *Aggregate cancer risk for U.S. population*. The Agency has classified fenhexamid as a ''not likely'' human carcinogen based on lack of evidence of carcinogenicity in male and female rats as well as in male and female mice, and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, fenhexamid is not expected to pose a cancer risk.

4. *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 fenhexamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC) method using electrochemical detection (ECD)) is available to enforce the tolerance expression. The method 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 no established or proposed Canadian, Mexican or Codex MRLs for fenhexamid on asparagus, therefore there are no issues for international harmonization for this current petition.

V. Conclusion

Therefore, the tolerance is established for residues of fenhexamid, (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide), in or on asparagus at 0.02 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 26, 2008.

Daniel C. Kenny,

Acting 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 180.553 is amended by alphabetically adding the following commodities to/in the table in paragraph (a) to read as follows:

§180.553 Fenhexamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Asparagus	0.02
* * *	* *

* * * * *

[FR Doc. E8–7038 Filed 4–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0426; FRL–8356–9]

Buprofezin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of buprofezin in or on berry, low growing , subgroup 13-07G; okra; olive; olive, oil; pepper, nonbell; radicchio; vegetable, fruiting, group 8, except nonbell pepper; and vegetable, leafy, except *Brassica*, group 4, except head lettuce and radicchio; and increases the existing tolerance for residues of buprofezin in or on head lettuce. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes existing tolerances for residues of buprofezin in or on leaf lettuce and tomato and modifies 40 CFR 180.511 by removing the third column (Expiration/Revocation Date) from the table in paragraph (a), since it is no longer applicable.

DATES: This regulation is effective April 9, 2008. Objections and requests for hearings must be received on or before June 9, 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–2007–0426. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in 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: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-5218; e-mail address: *stanton.susan@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–2007–0426 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 June 9, 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–2007–0426, 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 July 25, 2007 (72 FR 40877) (FRL–8137–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7207) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.511 be amended by establishing tolerances for residues of the insecticide buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in or on vegetable, leafy, except *Brassica*, group 4 at 25 parts per million (ppm); olive at 3.0 ppm; olive, oil at 9.0 ppm; and strawberry, bearberry, bilberry, lowbush blueberry, cloudberry, cranberry, lingonberry, muntries and partridge berry at 2.5 ppm. That notice referenced a summary of the petition prepared by Ninchino America, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*.

In the **Federal Register** of October 24, 2007 (72 FR 60369) (FRL–8150–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7253) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.511 be amended by establishing tolerances for residues of the insecticide buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in or on vegetable, fruiting, group 8; and okra at 1.8 ppm. That notice referenced a summary of the petition prepared by Ninchino America, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*.

Comments were received in response to the notices of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petitions, EPA has revised the tolerance levels for several commodities (okra; olive; olive, oil; vegetable, leafy, except *Brassica,* group 4; and vegetable, fruiting, group 8) and determined that separate tolerances are appropriate for head lettuce and radicchio of the leafy vegetable, except *Brassica*, group 4; and nonbell pepper of the fruiting vegetable group 8. EPA has also determined that a tolerance on berry, low growing, subgroup 13-07G is appropriate in lieu of the proposed tolerances on individual berry commodities. The reasons for these changes are explained in Unit IV.D.

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 residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, on berry, low growing, subgroup 13-07G at 2.5 ppm; lettuce, head at 6.0 ppm; okra at 4.0 ppm; olive at 3.5 ppm; olive, oil at 4.8 ppm; pepper, nonbell at 4.0 ppm; radicchio at 6.0 ppm; vegetable, fruiting, group 8, except nonbell pepper at 1.3 ppm; and vegetable, leafy, except *Brassica*, group 4, except head lettuce and radicchio at 35 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.

Buprofezin has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant; nor is it a dermal sensitizer. In subchronic toxicity studies, the primary effects of concern in the rat were increased microscopic lesions in male and female liver and thyroid, increased liver weights in males and females, and increased thyroid weight in males. In chronic studies in the rat, an increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid of males was reported. Increased relative liver weights were reported in female dogs. Buprofezin was not carcinogenic to male and female rats. In the mouse, increased absolute liver weights in males and females, along with an increased incidence of hepatocellular adenomas and hepatocellular adenomas plus carcinomas in females were reported. Based on the increased incidence of liver tumors in female mice only, no evidence of carcinogenicity in rats, and no evidence of genotoxicity in submitted guideline studies using *in vitro* and *in vivo* genotoxicity assays, EPA classified buprofezin as having suggestive evidence but found the evidence to be sufficiently weak that quantification of cancer risk was not deemed to be appropriate.

There is no evidence that buprofezin results in increased susceptibility of *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. Toxicity in the offspring was found at dose levels that were also toxic to the parent(s), and the effects observed in the offspring were not more severe, qualitatively, than the effects observed in the parent(s).

Specific information on the studies received and the nature of the adverse effects caused by buprofezin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Buprofezin - Human-Health Risk Assessment for Application to Low-Growing Berries, Olives, Leafy Vegetables (except Brassica), and Fruiting Vegetables.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as document ID number EPA–HQ–OPP–2007–0426-0004 in that docket.

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/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for buprofezin used for human risk assessment can be found at *http://www.regulations.gov* in document *Buprofezin - Human-Health Risk Assessment for Application to Low-Growing Berries, Olives, Leafy Vegetables (except Brassica), and Fruiting Vegetables* at page 11. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as document ID number EPA–HQ–OPP–2007–0426-0004 in that docket.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to buprofezin, EPA considered exposure under the petitioned-for tolerances as well as all existing buprofezin tolerances in 40 CFR 180.511. EPA assessed dietary exposures from buprofezin in 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. Such effects were identified in the toxicological studies for buprofezin for the population subgroup, females 13-50 years old; no such effects were identified for the general population or other population subgroups. In estimating acute dietary exposure of females 13-50 years old, EPA used food consumption information from the USDA 1994-1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present at tolerance levels in all commodities except meat and milk. Anticipated residues were calculated for meat and milk commodities as follows: Tolerances for meat and milk are established at the analytical method limit of quantitation (LOQ). Since residues were only detected in the livestock feeding study when feed contained 6.8-9.3x the maximum theoretical dietary burden (MTDB), residues in these commodities were normalized to 1x the MTDB in the acute dietary exposure assessment. For fruits and crops with an extended interval from initial application to harvest (>50 day), additional metabolites of toxicological concern (BF4 and its conjugates, and BF12) that are not included in the tolerance expression were included in the dietary exposure assessment, as appropriate, based on the ratio of metabolite to parent found in plant metabolism studies. No adjustment was made to account for the percent of crops treated with buprofezin in the acute dietary exposure assessment. 100 percent crop treated (PCT) was assumed for all commodities.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA relied upon anticipated residues and PCT information for some commodities. The

chronic analysis employed the same anticipated residue estimates for meat and milk as those employed in the acute analysis. For apple, pear, orange, and orange juice, average residues from the 2003, 2004 and/or 2005 USDA Pesticide Data Program (PDP) monitoring data were used for estimation of total buprofezin and metabolite residues. For all other plant commodities, tolerance-level or average field trial residues were used. For fruits and crops with an extended interval from initial application to harvest (>50 day), additional metabolites of toxicological concern (BF4 and its conjugates, and BF12) that are not included in the tolerance expression were included in the dietary exposure assessment, as appropriate, based on the ratio of metabolite to parent found in plant metabolism studies. The chronic analysis incorporated screening-level PCT estimates for several registered crops and projected percent crop treatment (PPCT) estimates for apple, peach, apricot, nectarine, cherry, plum, celery, lettuce, spinach, strawberry and tomato. Default processing factors were assumed for all commodities except tomato paste and purèe. The tomato paste and purèe processing factors were reduced to 1.2x based on the results of a tomato processing study.

iii. *Cancer*. EPA has classified buprofezin as having suggestive evidence based on the occurrence of liver tumors in female mice. Since the increased incidence of liver tumors occurred in female mice only and there was no evidence of carcinogenicity in rats or evidence of genotoxicity in submitted guideline studies using *in vitro* and *in vivo* genotoxicity assays, EPA regards the carcinogenic potential of buprofezin as very low and has determined that quantification of human cancer risk is not appropriate. Therefore, a cancer exposure assessment was not conducted.

iv. *Anticipated residue and 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:

PCT estimates for existing uses: Almond 1%; cantaloupe 5%; cotton 1%; citrus 1%; grape 1%; honeydew 1%; pear 10%; pistachio 1%; pumpkin 1%; squash 1%; and watermelon 1%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases 1% is used as the average. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

EPA used PPCT estimates for the following commodities: Apple 5%; peach 13%; apricot 40%; nectarine 60%; sweet cherry 44%; tart cherry 76%; plum 35%; celery 18%; head lettuce 67%; lettuce (other) 63%; spinach 30%; strawberry 39%; tomato (fresh) 42%; and tomato (processing) 25%.

EPA estimates PPCT for a new pesticide use by assuming that the PCT during the pesticide's initial five years of use on a specific use site will not exceed the average PCT of the market leader (i.e., the one pesticide with the greatest PCT) on that site over the three most recent surveys. Comparisons are only made among the chemicals of the same pesticide type (i.e., the leading insecticide on the use site is selected for comparison with the new insecticide). The PCT values included in the averages may be 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 primary source for PCT data. When a specific use site is not surveyed by USDA/NASS, EPA uses other sources including proprietary data and calculates the PPCT.

This estimated PPCT, based on the average PCT of the market leader, is appropriate for use in chronic dietary risk assessment. The 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 five years of actual use. The predominant factors that bear on whether the estimated PPCT could be exceeded are whether a new pesticide use or new pesticide is more efficacious or controls a broader spectrum of pests than the dominant pesticide; whether there are concerns that increasing pest pressure may intensify the use of alternate pesticides; and/or whether the new pesticide has a shorter pre-harvest or re-entry interval than alternative insecticides. Based on all information currently available, EPA concludes that it is unlikely that actual PCT for buprofezin will exceed the PPCT during the next five years. A discussion of the factors considered in making this determination can be found in the documents *Projected Percent Crop Treated for the Insecticide Buprofezin on Six Crops: Grapes, Apricots, Nectarines, Sweet Cherries, Tart Cherries, and Plums* and *Projected Percent Crop Treated (PPCT) for the Insecticide Buprofezin on Five Crops: Celery, Lettuce, Spinach, Strawberries, and Tomatoes*; and in Attachment #2 to the document *Buprofezin - Acute and Chronic Dietary Exposure and Risk Assessments*. The referenced documents are available at *www.regulations.gov* in docket ID number EPA–HQ–OPP–2007–0426.

The Agency believes that the three conditions listed in this unit 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 buprofezin 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 buprofezin 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 buprofezin. 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 Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of buprofezin for acute exposures are estimated to be 57.4 parts per billion (ppb) for surface water and 0.09 ppb for ground water. The EECs for chronic exposures are estimated to be 12.5 ppb for surface water and 0.09 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 57.4 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 12.5 ppb was used to assess 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). Buprofezin is not registered for use on any sites that would result in residential exposure.

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.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to buprofezin and any other substances and buprofezin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that buprofezin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold (''10X'') 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 evidence of increased quantitative or qualitative susceptibility of *in utero* rat or rabbit fetuses from exposure to buprofezin in prenatal developmental toxicity studies; and there is no evidence of increased quantitative or qualitative susceptibility of rat offspring in the 2-generation reproduction study. There is evidence of thyroid toxicity following subchronic and chronic exposures of rats and dogs to buprofezin; however, data to determine whether young animals are more susceptible to these effects are not available.

3. *Conclusion*. EPA has determined that the FQPA safety factor of 10X must be retained and applied to all subchronic and chronic exposures whose endpoint is based on thyroid effects. For acute exposures, EPA has determined that the FQPA safety factor may be reduced to 1X. These decisions are based on the following findings:

i. The toxicity database for buprofezin contains all of the standard toxicity studies. However, there is uncertainty regarding potential thyroid effects seen in some of these studies. Based on the evidence of thyroid toxicity following subchronic and chronic exposures of rats (histopathological lesions) and dogs (decreases in serum thyroxine levels and increased thyroid weights), EPA requested a buprofezin comparative thyroid assay study in rats (28–day; young versus adults) to determine if the thyroid effects occur at a lower dose in young versus adult animals. Since this study has not been submitted, EPA concludes that the 10X FQPA safety factor to account for database uncertainty should be retained and applied to all subchronic and chronic exposures whose endpoint is based on thyroid effects. The FQPA safety factor of 10X is not applicable to the acute endpoint, since a single dose of buprofezin would not be expected to perturb thyroid homeostasis in the adult or the young due to the buffering of thyroid hormone concentrations by homeostatic mechanisms for compounds with short half lives, like buprofezin.

ii. There is no indication that buprofezin 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 buprofezin 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. However, the developmental studies were not adequate to fully assess the potential for susceptibility from subchronic and chronic exposures. Consequently, there is concern for potential increased sensitivity or susceptibility in offspring regarding thyroid effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were refined for some commodities using reliable PCT/PPCT information and anticipated residue values calculated from the available monitoring data and field trial results. Dietary drinking water exposure is based on

conservative modeling estimates. Residential exposures are not expected. These assessments will not underestimate the exposure and risks posed by buprofezin.

Although there are no residual uncertainties identified in the exposure databases, no neurotoxic concerns for buprofezin, and no evidence of increased susceptibility of offspring in available studies, there is sufficient uncertainty regarding thyroid effects, particularly thyroid effects in the young, that EPA is retaining the 10X FQPA safety factor for all subchronic and chronic exposures whose endpoint is based on thyroid effects. EPA has also determined that the traditional 10X uncertainty factor to account for interspecies variation may be reduced to 3X for these exposures, since it has been established that rats are more susceptible to thyroid effects than humans. These factors, together with the traditional 10X uncertainty factor to account for intraspecies variation, result in a total uncertainty factor of 300X (10X, 3X and 10X) for subchronic and chronic exposures. The total uncertainty factor for acute exposures is 100X (10X intraspecies variation and 10X interspecies variation).

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and 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, the acute dietary exposure from food and water to buprofezin will occupy 7% of the aPAD for the population group females 13-49 years old. No acute endpoint of concern was identified for the remaining population groups.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to buprofezin from food and water will utilize 91% of the cPAD for children, 1 to 2 years old, the population group with the greatest estimated exposure. There are no residential uses for buprofezin that result in chronic residential exposure to buprofezin.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Buprofezin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Buprofezin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. As discussed in Unit III.C.1.iii., EPA regards the carcinogenic potential of buprofezin as very low and concludes that it poses no greater than a negligible cancer risk to humans.

6. *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 buprofezin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The gas chromatography/nitrogen phosphorus detector methods used in the field trial studies were adequately validated and similar to the method validated by EPA's Analytical Chemistry Branch (ACB) and forwarded to the Food and Drug Administration for publication in the Pesticide Analytical Manual I. Since adequate method validation and concurrent recoveries were attained in the field trial studies, EPA concludes that the method validated by ACB is appropriate for enforcement of the tolerances associated with these petitions. The method 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 no Canadian, Mexican, or Codex maximum residue limits (MRLs) established for buprofezin in/on any of the commodities associated with the current petitions, except tomato. There are Codex and Mexican MRLs for residues of buprofezin *per se* on tomato of 1 ppm and 0.5 ppm, respectively. Both MRLs are lower than the tolerance of 1.3 ppm being established for fruiting vegetables, a group which includes tomato; however, since the field trial data considered in determining the U.S. tolerance level indicate the potential for residues in/on tomato to exceed the international MRLs, harmonization is not possible at this time.

C. Response to Comments

Comments were received from a private citizen in response to the notices of filing of pesticide petitions PP7E7253 and PP7E7207. In response to the notice of filing of PP7E7207, the commenter indicated that she was unable to open ''the report on the proposal'' and complained generally about the government website, *http://www.regulations.gov*. If by ''the report on the proposal'' the commenter is referring to the registrant's summary of the petition, EPA notes that it is available in the docket in two common file formats, MicroSoft Word and Portable Document Format (PDF,) and cannot explain the commenter's inability to open it. In response to the notice of filing of PP7E7253, the commenter objected to any residues on vegetables and ''exemptions'' for ''this product'' on the basis of its potential carcinogenicity. EPA considered the carcinogenic potential of buprofezin in its risk assessment and determined that it did not pose a cancer risk. Comments received contained no scientific data or other substantive evidence to rebut this conclusion or the Agency's finding that there is a reasonable certainty that no harm will result from aggregate exposure to buprofezin from the establishment of these tolerances. The Agency has received these same or similar comments from this commenter on numerous previous occasions. Refer to **Federal Register** 70 FR 37686 (June 30, 2005), 70 FR 1354 (January 7, 2005), and 69 FR 63096 (October 29, 2004) for the Agency's previous responses to these objections.

D. Changes to Proposed Tolerances

Based upon review of the data supporting the petitions, EPA has revised the tolerance levels for several commodities and determined that separate tolerances are appropriate for certain members of the leafy (except *Brassica*) and fruiting vegetable groups. EPA revised the tolerances for okra from 1.8 ppm to 4.0 ppm; olive from 3.0 ppm to 3.5 ppm; olive, oil from 9.0 ppm to 4.8 ppm; vegetable, leafy, except *Brassica*, group 4, except head lettuce and radicchio from 25 ppm to 35 ppm;

and vegetable, fruiting, group 8, except nonbell pepper from 1.8 ppm to 1.3 ppm. EPA revised these 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* and the results of the olive processing study. EPA also determined that separate tolerances should be established for head lettuce and radicchio at 6.0 ppm and for nonbell pepper at 4.0 ppm, since there is more than a 5-fold difference between residues on these crops and other members of their respective crop groups: vegetable, leafy (except *Brassica*) group 4; and vegetable, fruiting group 8. A tolerance already exists for residues of buprofezin on head lettuce at 5.0 ppm; it will be increased to 6.0 ppm.

IR-4 petitioned for individual tolerances on strawberry, bearberry, bilberry, lowbush blueberry, cloudberry, cranberry, lingonberry, muntries and partridgeberry (PP 6E7163). In the **Federal Register** of December 7, 2007 (72 FR 69150) (FRL–8340–6), EPA issued a final rule that revised the crop grouping regulations. As part of this action, EPA expanded and revised berries group 13. Changes to crop group 13 included adding new commodities, revising existing subgroups and creating new subgroups (including a low growing berry subgroup consisting of the commodities requested in PP 7E7207 and cultivars, varieties, and/or hybrids of these). EPA indicated in the December 7, 2007 final rule as well as the earlier May 23, 2007 proposed rule (72 FR 28920) (FRL–8126–1) that, for existing petitions for which a Notice of Filing had been published, the Agency would attempt to conform these petitions to the rule. Therefore, consistent with this rule, EPA is establishing a tolerance on low growing berry subgroup 13-07G. EPA concludes it is reasonable to establish the tolerance on the newly created subgroup, since the individual commodities for which tolerances were requested are identical to those which comprise low growing berry subgroup 13-07G.

V. Conclusion

Therefore, tolerances are established for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in or on berry, low growing , subgroup 13-07G at 2.5 ppm; lettuce, head at 6.0 ppm; okra at 4.0 ppm; olive at 3.5 ppm; olive, oil at 4.8 ppm; pepper, nonbell at 4.0 ppm; radicchio at 6.0 ppm; vegetable, fruiting, group 8, except nonbell pepper at 1.3 ppm; and vegetable, leafy, except *Brassica*, group 4, except head lettuce and radicchio at 35 ppm. Further, the existing tolerances in/on ''lettuce, leaf'' at 13.0 ppm and ''tomato'' at 0.50 ppm are deleted, since residues of buprofezin on these commodities will be covered by the higher tolerances being established on ''vegetable, leafy, except *Brassica*, group 4, except head lettuce and radicchio '' and ''vegetable, fruiting, group 8, except non-bell pepper''.

The table of buprofezin tolerances at 40 CFR 180.511(a) currently includes a third column for expiration/revocation dates. Since none of the existing tolerances is time-limited and EPA is not time-limiting the new tolerances listed in this unit, there is no need for this column. Therefore, the third column of the table is being deleted.

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 26, 2008.

Daniel C. Kenny,

Acting 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 180.511 is amended by revising paragraph (a) to read as follows:

§ 180.511 Buprofezin; tolerances for residues.

(a) *General.* Tolerances are established for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in or on the following food commodities:

Commodity	Parts per million
Acerola	0.30
Almond	0.05
Almond, hulls	2.0
Apricot	9.0
Atemoya	0.30
Avocado	0.30
Banana	0.20
Bean, snap, succulent	0.02
Berry, low growing, subgroup 13-07G	2.5
Birida	0.30
Canistel	0.90
Cattle, fat	0.05
Cattle, kidney	0.05
Cattle, liver	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Cherimoya	0.30
Citrus, dried pulp	7.5
Citrus, oil	80
Cotton, gin byproducts	20.0
Cotton, undelinted seed	0.35
Custard apple	0.30
Feijoa	0.30
Fruit, citrus, group 10	2.5
Fruit, pome, group 11	4.0
Fruit, stone, group 12, except apricot and peach	1.9
Goat, fat	0.05
Goat, kidney	0.05
Goat, liver	0.05
Goat, meat	0.05
Goat, meat byproducts	0.05
Grape	2.5
Guave	0.30
Hog, fat	0.05
Hog, kidney	0.05
Hog, liver	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	0.05
Horse, kidney	0.05
Horse, liver	0.05
Horse, meat	0.05
Horse, meat byproducts	0.05
Llama	0.30
Jaboticaba	0.30
Lettuce, head	6.0
Loganberry	0.30
Lychee	0.30
Mango	0.90
Milk	0.01
Okra	4.0
Olive	3.5
Olive, oil	4.8
Papaya	0.90
Passionfruit	0.30
Peach	9.0
Pepper, nonbell	4.0
Pistachio	0.05
Pulasan	0.30
Radicchio	6.0
Rambutan	0.30
Sapodilla	0.90
Sapote, black	0.90
Sapote, mamey	0.90
Sheep, fat	0.05
Sheep, kidney	0.05
Sheep, liver	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Soursop	0.30
Spanish lime	0.30
Star apple	0.90
Starfruit	0.30
Sugar apple	0.30
Vegetable, cucurbit, group 9	0.50
Vegetable, fruiting, group 8, except nonbell pepper	1.3
Vegetable, leafy, except Brassica, group 4, except head lettuce and radicchio	35
Wax jambu	0.30

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[FR Doc. E8–7043 Filed 4–8–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR part 60.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Christian County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–7726			
Little River	Approximately 250 feet upstream of Huffman Mill Road	+495	Christian County (Unincorporated Areas).
	At confluence with North Fork Little River and South Fork Little River.	+505	
Montgomery Branch	Approximately 1,000 feet upstream of Louisville and Nashville Railroad.	+559	City of Hopkinsville, Pembroke, Christian County (Unincorporated Areas).
	Approximately 1,500 feet downstream of Frank Yost Lane	+592	
North Fork Little River	At confluence with Little River and South Fork Little River	+505	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Edward T. Breathitt Parkway.	+535	
Rock Bridge Branch	At confluence with South Fork Little River	+507	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 3,600 feet upstream of Bradshaw Road	+572	
Sanderson Creek	At confluence with North Fork Little River	+525	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 2,200 feet upstream of KY–1682	+553	
Sinkhole 1	Flooding Due to Sinkhole	+552	City of Oak Grove.
Sinkhole 10	Flooding Due to Sinkhole	+548	City of Oak Grove.
Sinkhole 10A	Flooding Due to Sinkhole	+545	City of Hopkinsville.
Sinkhole 11	Flooding Due to Sinkhole	+548	City of Oak Grove.
Sinkhole 11A	Flooding Due to Sinkhole	+548	City of Hopkinsville.
Sinkhole 12	Flooding Due to Sinkhole	+545	City of Oak Grove.
	Flooding Due to Sinkhole	+545	
Sinkhole 12A	Flooding Due to Sinkhole	+540	City of Hopkinsville.
Sinkhole 13	Flooding Due to Sinkhole	+544	City of Oak Grove.
Sinkhole 13A	Flooding Due to Sinkhole	+535	City of Hopkinsville.
Sinkhole 14	Flooding Due to Sinkhole	+546	City of Oak Grove.
Sinkhole 14A	Flooding Due to Sinkhole	+539	City of Hopkinsville.
Sinkhole 15	Flooding Due to Sinkhole	+546	City of Oak Grove.
Sinkhole 15A	Flooding Due to Sinkhole	+544	City of Hopkinsville.
Sinkhole 16	Flooding Due to Sinkhole	+544	City of Oak Grove.
Sinkhole 16A	Flooding Due to Sinkhole	+555	City of Hopkinsville.
Sinkhole 17	Flooding Due to Sinkhole	+542	City of Oak Grove.
Sinkhole 18	Flooding Due to Sinkhole	+540	City of Oak Grove.
Sinkhole 18A	Flooding Due to Sinkhole	+523	City of Hopkinsville.
Sinkhole 19	Flooding Due to Sinkhole	+535	City of Oak Grove.
Sinkhole 19A	Flooding Due to Sinkhole	+519	City of Hopkinsville.
Sinkhole 1A	Flooding Due to Sinkhole	+568	Christian County (Unincorporated Areas).
Sinkhole 2	Flooding Due to Sinkhole	+546	City of Oak Grove.
Sinkhole 20	Flooding Due to Sinkhole	+539	City of Oak Grove.
Sinkhole 20A	Flooding Due to Sinkhole	+522	City of Hopkinsville.
Sinkhole 21	Flooding Due to Sinkhole	+534	City of Oak Grove.
Sinkhole 21A	Flooding Due to Sinkhole	+537	Christian County (Unincorporated Areas).
Sinkhole 22	Flooding Due to Sinkhole	+533	City of Oak Grove.
Sinkhole 22A	Flooding Due to Sinkhole	+534	Christian County (Unincorporated Areas).
Sinkhole 23	Flooding Due to Sinkhole	+540	City of Oak Grove.
Sinkhole 24	Flooding Due to Sinkhole	+558	City of Oak Grove.
Sinkhole 25	Flooding Due to Sinkhole	+549	City of Oak Grove.
Sinkhole 26	Flooding Due to Sinkhole	+561	City of Oak Grove.
	Flooding Due to Sinkhole	+561	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Sinkhole 27	Flooding Due to Sinkhole	+552	City of Oak Grove.
Sinkhole 28	Flooding Due to Sinkhole	+552	City of Oak Grove.
Sinkhole 29	Flooding Due to Sinkhole	+552	City of Oak Grove.
Sinkhole 2A	Flooding Due to Sinkhole	+556	Christian County (Unincorporated Areas).
Sinkhole 3	Flooding Due to Sinkhole	+543	City of Oak Grove.
Sinkhole 30	Flooding Due to Sinkhole	+551	City of Oak Grove.
Sinkhole 31	Flooding Due to Sinkhole	+550	City of Oak Grove.
Sinkhole 32	Flooding Due to Sinkhole	+553	City of Oak Grove.
Sinkhole 33	Flooding Due to Sinkhole	+554	City of Oak Grove.
Sinkhole 34	Flooding Due to Sinkhole	+557	City of Oak Grove.
Sinkhole 35	Flooding Due to Sinkhole	+554	City of Oak Grove.
Sinkhole 36	Flooding Due to Sinkhole	+547	City of Oak Grove.
Sinkhole 37	Flooding Due to Sinkhole	+542	City of Oak Grove.
Sinkhole 38	Flooding Due to Sinkhole	+552	City of Oak Grove.
Sinkhole 39	Flooding Due to Sinkhole	+542	City of Oak Grove.
Sinkhole 3A	Flooding Due to Sinkhole	+530	Christian County (Unincorporated Areas).
Sinkhole 4	Flooding Due to Sinkhole	+548	City of Oak Grove.
Sinkhole 40	Flooding Due to Sinkhole	+542	City of Oak Grove.
Sinkhole 41	Flooding Due to Sinkhole	+552	City of Oak Grove.
Sinkhole 42	Flooding Due to Sinkhole	+549	City of Oak Grove.
Sinkhole 43	Flooding Due to Sinkhole	+546	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 44	Flooding Due to Sinkhole	+560	City of Oak Grove.
Sinkhole 45	Flooding Due to Sinkhole	+564	City of Oak Grove.
Sinkhole 46	Flooding Due to Sinkhole	+563	City of Oak Grove.
Sinkhole 47	Flooding Due to Sinkhole	+541	City of Oak Grove.
Sinkhole 48	Flooding Due to Sinkhole	+556	City of Oak Grove.
Sinkhole 49	Flooding Due to Sinkhole	+560	City of Oak Grove.
Sinkhole 4A	Flooding Due to Sinkhole	+537	Christian County (Unincorporated Areas).
Sinkhole 5	Flooding Due to Sinkhole	+543	City of Oak Grove.
Sinkhole 50	Flooding Due to Sinkhole	+558	City of Oak Grove.
Sinkhole 51	Flooding Due to Sinkhole	+560	City of Oak Grove.
Sinkhole 52	Flooding Due to Sinkhole	+567	City of Oak Grove.
Sinkhole 53	Flooding Due to Sinkhole	+569	City of Oak Grove.
Sinkhole 54	Flooding Due to Sinkhole	+569	City of Oak Grove.
Sinkhole 55	Flooding Due to Sinkhole	+568	City of Oak Grove.
Sinkhole 56	Flooding Due to Sinkhole	+530	City of Oak Grove.
Sinkhole 57	Flooding Due to Sinkhole	+532	City of Oak Grove.
Sinkhole 58	Flooding Due to Sinkhole	+549	City of Oak Grove.
Sinkhole 59	Flooding Due to Sinkhole	+567	City of Oak Grove.
Sinkhole 5A	Flooding Due to Sinkhole	+542	Christian County (Unincorporated Areas).
Sinkhole 6	Flooding Due to Sinkhole	+549	City of Oak Grove.
Sinkhole 60	Flooding Due to Sinkhole	+558	City of Oak Grove.
Sinkhole 61	Flooding Due to Sinkhole	+584	City of Oak Grove.
Sinkhole 62	Flooding Due to Sinkhole	+590	City of Oak Grove.
Sinkhole 66	Flooding Due to Sinkhole	+501	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 67	Flooding Due to Sinkhole	+507	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 68	Flooding Due to Sinkhole	+504	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 69	Flooding Due to Sinkhole	+509	City of Oak Grove.
Sinkhole 6A	Flooding Due to Sinkhole	+557	Christian County (Unincorporated Areas), City of Hopkinsville.
Sinkhole 7	Flooding Due to Sinkhole	+554	City of Oak Grove.
	Flooding Due to Sinkhole	+554	
Sinkhole 70	Flooding Due to Sinkhole	+512	City of Oak Grove.
Sinkhole 73	Flooding Due to Sinkhole	+568	City of Oak Grove.
Sinkhole 74	Flooding Due to Sinkhole	+580	City of Oak Grove.
Sinkhole 75	Flooding Due to Sinkhole	+577	City of Oak Grove.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Sinkhole 76	Flooding Due to Sinkhole	+544	City of Oak Grove.
Sinkhole 77	Flooding Due to Sinkhole	+537	City of Oak Grove.
Sinkhole 78	Flooding Due to Sinkhole	+560	Christian County (Unincorporated Areas).
Sinkhole 79	Flooding Due to Sinkhole	+577	Christian County (Unincorporated Areas).
Sinkhole 7A	Flooding Due to Sinkhole	+563	Christian County (Unincorporated Areas).
Sinkhole 8	Flooding Due to Sinkhole	+553	City of Oak Grove.
Sinkhole 80	Flooding Due to Sinkhole	+555	City of Oak Grove.
Sinkhole 81	Flooding Due to Sinkhole	+526	Christian County (Unincorporated Areas).
Sinkhole 82	Flooding Due to Sinkhole	+474	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 83	Flooding Due to Sinkhole	+533	City of Oak Grove.
Sinkhole 84	Flooding Due to Sinkhole	+536	City of Oak Grove.
Sinkhole 85	Flooding Due to Sinkhole	+537	City of Oak Grove.
Sinkhole 86	Flooding Due to Sinkhole	+538	City of Oak Grove.
Sinkhole 87	Flooding Due to Sinkhole	+534	City of Oak Grove.
Sinkhole 88	Flooding Due to Sinkhole	+543	City of Oak Grove.
Sinkhole 89	Flooding Due to Sinkhole	+541	City of Oak Grove.
Sinkhole 8A	Flooding Due to Sinkhole	+563	City of Oak Grove.
Sinkhole 9	Flooding Due to Sinkhole	+547	City of Oak Grove.
Sinkhole 90	Flooding Due to Sinkhole	+539	City of Oak Grove.
Sinkhole 91	Flooding Due to Sinkhole	+543	City of Oak Grove.
Sinkhole 92	Flooding Due to Sinkhole	+544	City of Oak Grove.
Sinkhole 93	Flooding Due to Sinkhole	+541	City of Oak Grove.
Sinkhole 94	Flooding Due to Sinkhole	+547	City of Oak Grove.
Sinkhole 95	Flooding Due to Sinkhole	+541	City of Oak Grove.
Sinkhole 96	Flooding Due to Sinkhole	+550	City of Oak Grove.
Sinkhole 9A	Flooding Due to Sinkhole	+537	City of Hopkinsville.
Sinkhole I–24	Flooding Due to Sinkhole	+561	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole Main Sink	Flooding Due to Sinkhole	+529	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole NF	Flooding Due to Sinkhole	+522	City of Hopkinsville.
Sinkhole North West	Flooding Due to Sinkhole	+569	City of Oak Grove.
Sinkhole South West	Flooding Due to Sinkhole	+530	City of Oak Grove, Christian County (Unincorporated Areas).
South Fork Little River	At confluence with Little River and North Fork Little River	+505	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 680 feet downstream of Dr. Martin Luther King Jr. Way.	+541	
South Fork Little River Tributary	Approximately 150 feet downstream of Dr. Martin Luther King Jr. Way.	+537	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 780 feet upstream of Harry Berry Lane	+557	
White Creek	At confluence with Little River and North Fork Little River	+533	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 170 feet upstream of Madisonville Road	+540	

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

ADDRESSES

City of Hopkinsville

Maps are available for inspection at 101 North Main Street, Hopkinsville, KY 42240.

City of Oak Grove

Maps are available for inspection at 8505 Pembroke Oak Grove Road, Oak Grove, KY 42262.

City of Pembroke

Maps are available for inspection at 101 North Main Street, Hopkinsville, KY 42240.

Christian County (Unincorporated Areas)

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Maps are available for inspection at 101 North Main Street, Hopkinsville, KY 42240.			
Lexington-Fayette Urban County Government, Kentucky, and Incorporated Areas Docket No.: FEMA–D–7822			
Bowman Mill Tributary	At the confluence with South Elkhorn Creek	+890	Lexington-Fayette Urban County Government.
	Approximately 920 feet upstream of Palomar Boulevard	+940	
Bryant Tributary	At the confluence with North Elkhorn Creek	+943	Lexington-Fayette Urban County Government.
	Approximately 2,200 feet upstream of Polo Club Boulevard	+985	
Cave Hill Tributary	At the confluence with Bowman Mill Tributary	+907	Lexington-Fayette Urban County Government.
	Approximately 2,780 feet upstream of the confluence with Bowman Mill Tributary.	+954	
Southpoint Tributary	At the confluence with West Hickman Creek	+890	Lexington-Fayette Urban County Government.
	Approximately 2,800 feet upstream of Southpoint Drive	+947	
Wolf Run	Approximately 280 feet upstream of Beacon Hill Tributary	+922	Lexington-Fayette Urban County Government.
	At Nicholasville Road	+990	

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

ADDRESSES

Lexington-Fayette Urban County Government

Maps are available for inspection at Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507.

Livingston County, Michigan, and Incorporated Areas Docket No.: FEMA–B–7726			
Bogue Creek	Approximately 1,200 feet upstream of confluence of South Branch Shiawassee River.	+842	Township of Cohoctah, Township of Howell, Township of Oceola.
	Approximately 2 miles upstream of Curdy Road	+885	
Conway Drain No. 1	Downstream side of W Allen Road	+880	Township of Conway.
	Upstream side of Sherwood Road	+885	
Fonda Lake	Entire shoreline of Fonda Lake	+898	Township of Brighton.
Halfmoon Lake	Entire shoreline of Halfmoon Lake	+885	Township of Unadilla.
Handy Drain No. 5	Approximately 1,600 feet upstream of Converse Road	+880	Township of Handy.
	Approximately 90 feet downstream side of I–96 (East Bound)	+893	
Handy Iosco Drain No. 1	Approximately 1,100 feet downstream of Layton Road	+888	Township of Handy, Township of Howell, Township of Iosco.
	Upstream side of Mason Road	+907	
Island Lake	Entire shoreline of Island Lake	+889	Township of Brighton.
Marion and Genoa Drain	Approximately 525 feet upstream of confluence of South Branch Shiawassee River.	+882	Township of Marion, City of Howell, Township of Genoa.
	Approximately 80 feet upstream of Beck Road	+913	
Middle Branch Red Cedar River	Approximately 1,200 feet upstream of the confluence of Red Cedar River.	+886	Township of Handy, Township of Iosco.
	Upstream side of W Coon Lake Road	+894	
Mirror Lake	Entire shoreline of Mirror Lake	+901	Township of Green Oak.
Patterson Lake	Entire shoreline of Patterson Lake	+886	Township of Unadilla.
Portage Lake	Entire shoreline of Portage Lake	+852	Township of Hamburg.
Red Cedar River	Approximately 150 feet downstream of N Nicholson Road	+880	Township of Conway, Township of Handy, Township of Howell, Township of Marion, Village of Fowlerville.
	Approximately 90 feet upstream of W Coon Lake Road	+934	
South Branch Shiawassee River	Approximately 280 feet downstream of Oak Grove Road	+850	Township of Cohoctah, Township of Howell.
	Approximately 0.7 mile downstream of Bowen Road	+864	
Thompson Lake	Entire shoreline of Thompson Lake	+907	Township of Oceola.
Tributary to North Ore Creek	Approximately 1,400 feet upstream of Clyde Road	+911	Township of Hartland, Township of Oceola.
	Upstream side of N Hacker Road	+1002	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary to Red Cedar River	Confluence of Red Cedar River and Tributary to Red Cedar River.	+883	Village of Fowlerville, Township of Handy.
	Approximately 1,650 feet upstream of Pinewood Drive	+899	
West Branch Red Cedar River ...	Approximately 1,100 feet downstream of Renee Court	+878	Township of Conway, Township of Handy.
	Approximately 400 feet downstream of I–96 Westbound	+881	
Woodland Lake	Entire shoreline of Woodland Lake	+936	Township of Brighton.

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

ADDRESSES

City of Brighton

Maps are available for inspection at 200 N. First Street, Brighton, MI 48116.

Township of Cohoctah

Maps are available for inspection at 10518 Antcliff Road, Fowlerville, MI 48836.

Township of Conway

Maps are available for inspection at 8015 N. Fowlerville Road, Fowlerville, MI 48836.

Township of Deerfield

Maps are available for inspection at 4492 Center Road, Linden, MI 48451.

Township of Genoa

Maps are available for inspection at 2911 Dorr Road, Brighton, MI 48116.

Township of Green Oak

Maps are available for inspection at 1001 Silver Lake Road, Brighton, MI 48116–8361.

Township of Hamburg

Maps are available for inspection at 10405 Merrill Road, Whitmore Lake, MI 48189.

Township of Handy

Maps are available for inspection at 136 N. Grand Avenue, Fowlerville, MI 48836.

Township of Hartland

Maps are available for inspection at 3191 Hartland Road, Hartland, MI 48353.

Township of Howell

Maps are available for inspection at 3525 Byron Road, Howell, MI 48855.

Township of Iosco

Maps are available for inspection at 2050 Bradley Road, Webberville, MI 48892.

Township of Marion

Maps are available for inspection at 2877 W. Coon Lake Road, Howell, MI 48843.

Township of Oceola

Maps are available for inspection at 1577 N. Latson Road, Howell, MI 48843.

Township of Putnam

Maps are available for inspection at 131 S. Howell Street, Pinckney, MI 48169.

Township of Tyrone

Maps are available for inspection at 10408 Center Road, Fenton, MI 48430.

Township of Unadilla

Maps are available for inspection at 126 Webb Street, Gregory, MI 48137.

Village of Fowlerville

Maps are available for inspection at 213 S. Grand Avenue, Fowlerville, MI 48836.

Village of Pinckney

Maps are available for inspection at 220 S. Howell Street, Pinckney, MI 48169.

Davie County, North Carolina and Incorporated Areas Docket No.: FEMA–D–7812

Baxter Creek	At the confluence with Bear Creek	+680	Unincorporated Areas of Davie County.
	Approximately 1.1 miles upstream of the confluence with Bear Creek.	+692	
Bear Creek	At the confluence with South Yadkin River	+671	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 310 feet downstream of Duke Whittaker Road (State Road 1316).	+811	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Bear Creek Tributary 1	At the confluence with Bear Creek	+688	Unincorporated Areas of Davie County.
	Approximately 580 feet upstream of Railroad	+698	
Bear Creek Tributary 2	At the confluence with Bear Creek	+700	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 740 feet upstream of South Davie Drive	+769	
Bear Creek Tributary 3	At the confluence with Bear Creek	+708	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 860 feet upstream of Valley Road	+763	
Bear Creek Tributary 3A	At the confluence with Bear Creek Tributary 3	+714	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 0.5 mile upstream of the confluence of Bear Creek Tributary 3.	+743	
Bear Creek Tributary 4	At the confluence with Bear Creek	+711	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 240 feet upstream of U.S. 64 Highway W	+735	
Bear Creek Tributary 5	At the confluence with Bear Creek	+767	Unincorporated Areas of Davie County.
	Approximately 410 feet upstream of Ralph Ratledge Road (State Road 1312).	+776	
Beaver Creek	At the confluence with Hunting Creek	+702	Unincorporated Areas of Davie County.
	Approximately 90 feet downstream of Castle Lane	+731	
Beaver Creek Tributary 1	At the confluence with Beaver Creek	+703	Unincorporated Areas of Davie County.
	Approximately 0.6 mile upstream of U.S. 64 Highway W	+738	
Becks Spring Branch	At the confluence with Dutchman Creek	+699	Unincorporated Areas of Davie County.
	Approximately 0.6 mile upstream of Eatons Church Road (State Road 1415).	+726	
Bryant Branch	At the confluence with Dutchman Creek	+690	Unincorporated Areas of Davie County.
	Approximately 120 feet upstream of Lutz Lane	+715	
Buffalo Creek	At the confluence with Dutchman Creek	+669	Unincorporated Areas of Davie County.
	Approximately 1.2 miles upstream of Milling Road	+690	
Cain Mill Branch	At the confluence with Steelman Creek	+795	Unincorporated Areas of Davie County.
	At the Davie/Yadkin County boundary	+795	
Carter Creek	At the confluence with Yadkin River	+692	Unincorporated Areas of Davie County.
	At NC 801	+699	
Carter Creek Tributary	At the confluence with Carter Creek	+692	Unincorporated Areas of Davie County.
	Approximately 0.7 mile upstream of the confluence with Carter Creek.	+698	
Cedar Creek	At the confluence with Dutchman Creek	+673	Unincorporated Areas of Davie County.
	Approximately 2.4 miles upstream of Wyo Road (State Road 1430).	+784	
Chinquapin Creek	At the confluence with Dutchman Creek	+729	Unincorporated Areas of Davie County.
	At the Davie/Yadkin County boundary	+788	
Cody Creek	The confluence with the Yadkin River	+658	Unincorporated Areas of Davie County.
	Approximately 0.5 mile upstream of NC 801	+709	
Cub Creek	At the confluence with Cedar Creek	+674	Unincorporated Areas of Davie County.
	Approximately 1.0 mile upstream of the confluence with Cedar Creek.	+687	
Dry Branch	At the confluence with Dutchman Creek	+737	Unincorporated Areas of Davie County.
	Approximately 0.7 mile upstream of Chinquapin Road	+781	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Dutchman Creek	At the confluence with the Yadkin River	+661	Unincorporated Areas of Davie County.
	Approximately 0.4 mile upstream of Amber Hill Road (State Road 1325).	+811	
Dutchman Creek Tributary 2	At the confluence with Dutchman Creek	+661	Unincorporated Areas of Davie County.
	Approximately 0.6 mile upstream of NC 801	+681	
Dutchman Creek Tributary 3	At the confluence with Dutchman Creek	+661	Unincorporated Areas of Davie County.
	Approximately 1.2 miles upstream of Frank Short Road	+705	
Dutchman Creek Tributary 4	At the confluence with Dutchman Creek	+683	Unincorporated Areas of Davie County.
	Approximately 640 feet upstream of Woodward Road (State Road 1407).	+695	
Dutchman Creek Tributary 5	At the confluence with Dutchman Creek	+776	Unincorporated Areas of Davie County.
	Approximately 1.0 mile upstream of Ben Anderson Road (State Road 1321).	+800	
Dutchman Creek Tributary 6	At the confluence with Dutchman Creek	+784	Unincorporated Areas of Davie County.
	Approximately 300 feet upstream of Davie/Iredell County boundary.	+822	
Elisha Creek	At the confluence with Dutchman Creek	+667	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 1,560 feet upstream of the confluence of Elisha Creek Tributary.	+712	
Elisha Creek Tributary	At the confluence with Elisha Creek	+706	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 0.8 mile upstream of the confluence with Elisha Creek.	+719	
Elsworth Creek	At the confluence with Dutchman Creek	+664	Unincorporated Areas of Davie County.
	Approximately 1.2 miles upstream of Williams Road (State Road 1610).	+699	
Frost Mill Creek	At the confluence with Dutchman Creek	+688	Unincorporated Areas of Davie County.
	Approximately 0.4 mile upstream of Cana Road (State Road 1408).	+744	
Fulton Creek	At the confluence with the Yadkin River	+677	Unincorporated Areas of Davie County.
	Approximately 1,080 feet upstream of Markland Road (State Road 1618).	+714	
Greasy Creek	At the confluence with Dutchman Creek	+699	Unincorporated Areas of Davie County.
	Approximately 2.0 miles upstream of Eatons Church Road (State Road 1415).	+757	
Hauser Creek	Approximately 100 feet downstream of the Davie/Yadkin County boundary.	+711	Unincorporated Areas of Davie County.
	Approximately 0.7 mile upstream of Spillman Road (State Road 1458).	+725	
Howard Branch	At the confluence with Dutchman Creek	+730	Unincorporated Areas of Davie County.
	Approximately 1.3 miles upstream of Jack Booe Road (State Road 1330).	+772	
Humpy Creek	At the confluence with Dutchman Creek	+661	Unincorporated Areas of Davie County.
	Approximately 680 feet upstream of Riverview Road (State Road 1814).	+686	
Hunting Creek	At the confluence with South Yadkin River	+674	Unincorporated Areas of Davie County.
	At the Davie/Iredell County boundary	+724	
Hunting Creek Tributary 1	At the confluence with Hunting Creek	+690	Unincorporated Areas of Davie County.
	Approximately 140 feet downstream of Godbey Road (State Road 1150).	+707	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Hunting Creek Tributary 1A	At the confluence with Hunting Creek Tributary 1	+690	Unincorporated Areas of Davie County.
	Approximately 1,420 feet upstream of I–40 Highway W	+701	
Hunting Creek Tributary 2	At the confluence with Hunting Creek	+715	Unincorporated Areas of Davie County.
	Approximately 0.4 mile upstream of County Line Road (State Road 1338).	+752	
Hunting Creek Tributary 3	At the confluence with Hunting Creek	+719	Unincorporated Areas of Davie County.
	Approximately 0.8 mile upstream of the confluence with Hunting Creek.	+731	
Leonard Creek	At the confluence with Dutchman Creek	+666	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 1,610 feet upstream of the confluence of Leonard Creek Tributary 1.	+698	
Leonard Creek Tributary 1	At the confluence with Leonard Creek	+689	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 500 feet upstream of the confluence of Leonard Creek Tributary 1B.	+739	
Leonard Creek Tributary 1A	At the confluence with Leonard Creek Tributary 1	+701	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 0.8 mile upstream of the confluence with Leonard Creek Tributary 1.	+725	
Little Bear Creek	At the confluence with Bear Creek	+739	Unincorporated Areas of Davie County.
	Approximately 700 feet downstream of Black Welder Road (State Road 1309).	+798	
Little Creek (North)	At the confluence with South Yadkin River	+682	Unincorporated Areas of Davie County.
	Approximately 100 feet upstream of the Davie/Iredell County boundary.	+799	
Little Creek Tributary 1	At the confluence with Little Creek (North)	+750	Unincorporated Areas of Davie County.
	Approximately 640 feet upstream of Crescent Drive (State Road 1157).	+760	
Nelson Creek	At the confluence with Elisha Creek	+693	Unincorporated Areas of Davie County, Town of Mocksville.
	Approximately 0.5 mile upstream of the confluence of Nelson Creek Tributary 1.	+740	
Nelson Creek Tributary 1	At the confluence with Nelson Creek	+723	Town of Mocksville.
	Approximately 660 feet upstream of Park Avenue	+758	
Nelson Creek Tributary 1A	At the confluence with Nelson Creek Tributary 1	+726	Town of Mocksville.
	Approximately 1,260 feet upstream of the confluence with Nelson Creek Tributary 1.	+752	
No Creek	At the confluence with Dutchman Creek	+661	Unincorporated Areas of Davie County.
	Approximately 0.5 mile upstream of U.S. Highway 64	+689	
Noland Creek	At the confluence with Dutchman Creek	+675	Unincorporated Areas of Davie County.
	Approximately 1,430 feet upstream of McClamrock Road (State Road 1640).	+687	
Noland Creek Tributary 1	At the confluence with Noland Creek	+676	Unincorporated Areas of Davie County.
	Approximately 0.4 mile upstream of McClamrock Road	+695	
Peeler Creek	At the confluence with Cody Creek	+658	Unincorporated Areas of Davie County.
	Approximately 0.6 mile upstream of Will Boone Road (State Road 1802).	+696	
Peoples Creek	At the confluence with the Yadkin River	+684	Unincorporated Areas of Davie County.
	Approximately 1.5 miles upstream of Palomino Road	+770	
Reedy Creek	At the confluence with the Yadkin River	+653	Unincorporated Areas of Davie County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 400 feet downstream of Cherry Hill Road (State Road 1819).	+671	
Sheek Creek	At the confluence with the Yadkin River	+702	Unincorporated Areas of Davie County, Town of Bermuda Run.
	Approximately 1,640 feet upstream of Double A Trail	+722	
Smith Creek	Approximately 1,000 feet upstream of Kingsmill Drive	+700	Unincorporated Areas of Davie County, Town of Bermuda Run.
	Approximately 1,510 feet upstream of I–40 Highway W	+746	
South Yadkin River	At the confluence with Yadkin River	+648	Unincorporated Areas of Davie County, Town of Cooleemee.
	Approximately 1,100 feet upstream of the Rowan/Davie/Iredell County boundary.	+699	
South Yadkin River Tributary 1	At the confluence with South Yadkin River	+656	Unincorporated Areas of Davie County.
	Approximately 0.7 mile upstream of the confluence with South Yadkin River.	+669	
South Yadkin River Tributary 2	At the confluence with South Yadkin River	+656	Unincorporated Areas of Davie County.
	Approximately 2,000 feet upstream of the confluence of South Yadkin River Tributary 2B.	+656	
South Yadkin River Tributary 2A	At the confluence with South Yadkin River Tributary 2	+656	Unincorporated Areas of Davie County.
	Approximately 1,590 feet downstream of Pine Ridge Road (State Road 1103).	+656	
South Yadkin River Tributary 2B	At the confluence with South Yadkin River Tributary 2	+656	Unincorporated Areas of Davie County.
	Approximately 0.4 mile upstream of the confluence with South Yadkin River Tributary 2.	+660	
South Yadkin River Tributary 3	At the confluence with South Yadkin River	+690	Unincorporated Areas of Davie County.
	Approximately 0.6 mile upstream of the confluence with South Yadkin River.	+691	
South Yadkin River Tributary 4	At the confluence with South Yadkin River	+693	Unincorporated Areas of Davie County.
	Approximately 0.5 mile upstream of the confluence with South Yadkin River.	+695	
Steelman Creek	At the confluence with Dutchman Creek	+740	Unincorporated Areas of Davie County.
	Approximately 0.4 mile upstream of the confluence of Cain Mill Branch.	+795	
Sugar Creek	At the confluence with Cedar Creek	+681	Unincorporated Areas of Davie County.
	Approximately 370 feet upstream of Bobbit Road (State Road 1444).	+742	
Sugar Creek Tributary 1	At the confluence with Sugar Creek	+729	Unincorporated Areas of Davie County.
	Approximately 80 feet downstream of Rainbow Road (State Road 1441).	+737	
Yadkin River	At the Davie/Davidson/Rowan County boundary	+648	Unincorporated Areas of Davie County, Town of Bermuda Run.
	Approximately 1,500 feet upstream of the Forsyth/Davie/Yadkin County boundary.	+711	
Yadkin River Tributary 1	At the confluence with the Yadkin River	+678	Unincorporated areas of Davie County.
	Approximately 780 feet upstream of Todd Road (State Road 1645).	+678	
Yadkin River Tributary 3	At the confluence with Yadkin River	+695	Town of Bermuda Run.
	Approximately 450 feet upstream of Bridge Street	+703	

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

ADDRESSES

Town of Bermuda Run

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

Maps are available for inspection at Bermuda Run Town Hall, 169 Yadkins Valley Road, Suite 100, Advance, North Carolina.

Town of Cooleemee

Maps are available for inspection at Cooleemee Town Hall, 7766 NC Highway 801 South, Cooleemee, North Carolina 270141.

Town of Mocksville

Maps are available for inspection at Mocksville Town Hall, 171 Clement Street, Mocksville, North Carolina.

Unincorporated Areas of Davie County

Maps are available for inspection at Davie County Development Services, 172 Clement Street, Mocksville, North Carolina.

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

Dated: March 25, 2008.

David I. Maurstad,

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

[FR Doc. E8–6914 Filed 4–8–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080103017–8466–02]

RIN 0648–AS01

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

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP) that was published in the **Federal Register**, Friday, October 5, 2007.

DATES: This correction is effective October 5, 2008.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9300 Ext. 6503, *diane.borggaard@noaa.gov*; Kristy Long, NMFS, Office of Protected Resources, 301–713–2322, *kristy.long@noaa.gov*.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of this correction was published Friday, October 5, 2007 (72 FR 57104). That final rule contains inadvertent errors concerning the effective dates of the rule in both the preamble and regulatory text.

This rule provides clarification regarding the effective date for the majority of the provisions of the October 5, 2007 final rule. The **DATES** section in the preamble and the regulatory text clearly reflect NMFS' intent for the majority of the provisions in the rule to become effective on April 5, 2008. However, the discussion in the preamble inadvertently referenced an incorrect date, April 7, 2008, for the majority of the provisions. NMFS is clarifying that the correct effective date for the majority of the provisions of the ALWTRP rule is April 5, 2008, as clearly stated in the **DATES** section and the regulatory text.

In addition, this rule corrects the effective date for certain paragraphs of § 229.32. Due to an inadvertent error, both the preamble and regulatory text incorrectly indicate that the effective date for those paragraphs is October 6, 2008. This rule corrects the preamble and regulatory text of § 229.32 to correct this error. The correct effective date for the regulatory text in § 229.32 paragraphs (c)(5)(ii)(B), (c)(6)(ii)(B), (c)(7)(ii)(C), (c)(8)(ii)(B), (c)(9)(ii)(B), (d)(6)(ii)(D), (d)(7)(ii)(D) and (i)(3), is October 5, 2008. All other information remains unchanged and will not be repeated in this correction.

E.O. 12866: This final rule has been determined to be not significant under EO 12866.

Administrative Procedure Act: The AA finds good cause under 5 U.S.C. 553(b)(B) to waive notice and opportunity for public comments as it is unnecessary and contrary to the public interest. In the October 5, 2007, final rule, the **DATES** section correctly reflected the intended effective dates of certain paragraphs of § 229.32. However, due to an inadvertent error, part of the preamble and the regulatory text did not reflect the same effective dates as published in the **DATES** section. This rule clarifies the discussion in the October 5, 2007 preamble and corrects the regulatory text to reflect the correct effective dates for § 229.32. If this rule were subject to notice and opportunity to comment, the provisions published in the October 5, 2007, final rule would go into effect on the incorrect date. In order to avoid confusion with regard to the effective dates of the relevant provisions, the AA waives the rulemaking requirements for this rule.

Correction

The following are corrections to FR Doc. 07–4904, October 5, 2007:

1. On page 57185, in the first column, in § 229.32(c)(5)(ii)(B), ''October 6, 2008'' should read ''October 5, 2008''.
2. On page 57185, in the third column, in § 229.32(c)(6)(ii)(B), ''October 6, 2008'' should read ''October 5, 2008''.
3. On page 57186, in the first column, in § 229.32(c)(7)(ii)(C), ''October 6, 2008'' should read ''October 5, 2008''.
4. On page 57186, in the second column, in § 229.32(c)(8)(ii)(B), ''October 6, 2008'' should read ''October 5, 2008''.
5. On page 57187, in the first column, in § 229.32(c)(9)(ii)(B), ''October 6, 2008'' should read ''October 5, 2008''.
6. On page 57189, in the first column, in § 229.32(d)(6)(ii)(D), ''October 6, 2008'' should read ''October 5, 2008''.
7. On page 57190, in the first column, in § 229.32(d)(7)(ii)(D), ''October 6, 2008'' should read ''October 5, 2008''.
8. On page 57193, in the second column, in § 229.32(i)(3), ''October 6, 2008'' should read ''October 5, 2008''.

Authority: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

Dated: April 4, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1116 Filed 4–4–08; 2:17 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XH07

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel by Vessels in the Amendment 80 Limited Access Fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel for vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2008 Atka mackerel allowable catch (TAC) specified for vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 4, 2008, through 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The A season allowance of the 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI is 4,649 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.20(a)(8)(ii)(A) and § 679.91(c)(4).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,629 mt and is setting aside the remaining 20 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 3, 2008.

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

This action is required by § 679.20 and § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: April 4, 2008.

Emily H. Menashes

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

[FR Doc. 08–1114 Filed 4–4–08; 2:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XH03

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 4, 2008, though 1200 hrs, A.l.t., June 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The B season allowance of the 2008 Pacific cod TAC allocated to trawl catcher vessels in the BSAI is 3,706 metric tons as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the B season allowance of the 2008 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,656 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with

§ 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by trawl catcher vessels in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 3, 2008.

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

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

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

Dated: April 4, 2008.

Emily H. Menashes

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

[FR Doc. 08–1115 Filed 4–4–08; 2:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 69

Wednesday, April 9, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0915; Airspace Docket No. 07–ASW–13]

Proposed Establishment of Class D Airspace; Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Double Eagle II Airport, Albuquerque, New Mexico. The establishment of an air traffic control tower has made this action necessary for the safety of Instrument Flight Rule (IFR) operations at the Double Eagle II Airport.

DATES: Comments must be received on or before May 27, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–09 15/Airspace Docket No. 07–AS W–13, at the beginning of your comments. You may also submit comments on the Internet at *http://www.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: Gary Mallett, AMTI, CTR, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–4949.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, 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 proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–09 15/Airspace Docket No. 07–AS W–13.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 1 l–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71, by establishing a Class D airspace area for IFR operations at Double Eagle II Airport, Albuquerque, New Mexico. The establishment of an air traffic control tower has made this action necessary. The area would be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 U.S. 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 establishes controlled airspace at Double Eagle II Airport, Albuquerque, New Mexico.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; 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 Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW NM D Albuquerque, NM [New]

Double Eagle II Airport, NM
(Lat. 35°08′42″ N., long. 106°42′40″ W.)
Dudle NDB (LOM)
(Lat. 35°13′02″ W., long. 106°42′46″ W.)

That airspace extending upward from the surface to and including 7,500 feet MSL within a 4.3 mile radius of Double Eagle II Airport, and within 1 mile each side of the Double Eagle Runway 22 ILS localizer course, extending northeast from the 4.3 mile radius to the DUDLE NDB (LOM) excluding that airspace within the Albuquerque International Airport Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on March 31, 2008.

Walter Tweedy,

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

[FR Doc. E8–7267 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–305P]

RIN 1117–AB16

Control of Immediate Precursor Used in the Illicit Manufacture of Fentanyl as a Schedule II Controlled Substance

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is proposing to designate the precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP) as an immediate precursor for the schedule II controlled substance, fentanyl, under the definition set forth in 21 U.S.C. § 802(23). Furthermore, DEA is proposing to control ANPP as a schedule II substance under the Controlled Substances Act (CSA), pursuant to the authority in 21 U.S.C. 811(e), which states that an immediate precursor may be placed in the same schedule as the controlled substance it produces, without the need of addressing the ''factors determinative of control'' in 21 U.S.C. § 811 or the findings required in 21 U.S.C. 812(b).

ANPP is the immediate chemical intermediary in the synthesis process currently used by clandestine laboratory operators for the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of hundreds of fentanyl-related overdoses in the United States in recent months. DEA believes that the control of ANPP as a schedule II controlled substance is necessary to prevent its diversion as an immediate chemical intermediary for the illicit production of fentanyl.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before June 9, 2008.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–305'' on all written and electronic correspondence. Written comments via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent directly to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats. DEA will not accept any file format other than those specifically listed here.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Drug Enforcement Administration (DEA) is extremely concerned with the recent increase in the illicit manufacture and distribution of fentanyl, which has

resulted in hundreds of fentanyl-related overdoses and fentanyl-related deaths in several areas of the country. DEA is proposing to designate the precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP) as an immediate precursor for the schedule II controlled substance fentanyl under the definition set forth in 21 U.S.C. 802(23).

Under the immediate precursor provision in 21 U.S.C. 811(e), DEA may schedule an immediate precursor ''without regard to the findings required by'' section 811(a) or section 812(b) and ''without regard to the procedures'' prescribed by section 811(a) and (b). Because of the authority in section 811(e), DEA need not address the ''factors determinative of control'' in section 811 or the findings required for placement in schedule II in section 812(b)(2), and accordingly, DEA is not seeking comment on those factors and/or findings in this NPRM.

This rulemaking proposes two actions. It (1) proposes the designation of the precursor chemical ANPP as an immediate precursor for the schedule II controlled substance, fentanyl, under the definition set forth in 21 U.S.C. 802(23); and (2) proposes control of ANPP as a schedule II substance pursuant to the authority in 21 U.S.C. 811(e). DEA is soliciting comment on these two proposed actions, as well as on any possible legitimate uses of ANPP that are unrelated to fentanyl (including industrial uses) in order to assess the potential commercial impact of scheduling ANPP.

Background

Fentanyl is a schedule II controlled substance. Fentanyl and analogues of fentanyl are the most potent opioids available for human and veterinary use. Fentanyl produces opioid effects that are indistinguishable from morphine or heroin, but fentanyl has a greater potency and a shorter duration of action. Fentanyl is approximately 50 to 100 times more potent than morphine and 30 to 50 times more potent than heroin, depending on the physiological or behavioral measure, the route of administration, and other factors.

The legitimate medical use of fentanyl is for anesthesia and analgesia, but fentanyl's euphoric effects are highly sought after by narcotic addicts. Fentanyl can serve as a direct pharmacological substitute for heroin in opioid-dependent individuals. Fentanyl is a very dangerous substitute for heroin, however, because the amount that produces a euphoric effect also induces respiratory depression. Furthermore, due to fentanyl's greater potency, illicit drug dealers have trouble adjusting (''cutting'') pure fentanyl into non-lethal dosage concentrations. Heroin users similarly have difficulty determining how much to take to get their ''high'' and sometimes mistakenly take a lethal quantity of the fentanyl. Unfortunately, only a slight excess of fentanyl can be, and is often, lethal, because the resulting level of respiratory depression is sufficient to cause the user to stop breathing.

Illicit Fentanyl-Related Deaths

In 2005 and 2006, DEA saw a sharp increase in the seizures of illicit fentanyl. The distribution of illicit fentanyl or illicit fentanyl combined with heroin or with cocaine (i.e., a ''speedball'') resulted in an outbreak of hundreds of confirmed and suspected fentanyl-related overdose deaths in the United States since April 2005, according to the Centers for Disease Control and Prevention (CDC) and medical examiners representing numerous cities and counties across the United States. DEA terms fentanyl-related deaths ''suspected'' until confirmed through the completion of an autopsy, a positive toxicological testing result for fentanyl in the blood, and the reporting of the death to the DEA.

To address this emergency health situation, DEA published an Interim Final Rule ''Control of a Chemical Precursor Used in the Illicit Manufacture of Fentanyl as a List I chemical'' (72 FR 20039, April 23, 2007) to control N-phenethyl-4-piperidone (NPP), the chemical precursor to ANPP, as a List I chemical. As DEA discussed extensively in that Interim Final Rule, at least 972 confirmed fentanyl-related deaths, and 162 suspected fentanyl-related deaths, mostly in Delaware, Illinois, Maryland, Michigan, Missouri, New Jersey, and Pennsylvania were initially reported to the DEA. The number of fentanyl-related deaths significantly decreased after October 2006 and continued at lower levels following control of the precursor NPP in 2007.

From the information and data collected, there is a strong indication that the fentanyl in these confirmed and suspected fentanyl-related deaths is the result of illicitly manufactured fentanyl, rather than from fentanyl diverted from legal pharmaceutical manufacturers. Forensic testing of seized fentanyl drug exhibits can identify manufacture procedure markers such as benzylfentanyl and ANPP. The forensic data suggests that most of these fentanyl-related deaths are from fentanyl illicitly manufactured by the procedure called the Siegfried method, discussed in DEA's Interim Final Rule, which uses NPP/ANPP.

Synthesis of Fentanyl

DEA has determined from the forensic testing of seized illicit fentanyl that two primary synthesis routes (*i.e.*, the Janssen synthesis route and the Siegfried method) are being used to produce fentanyl clandestinely. In 1965, Janssen Pharmaceutical patented the original synthesis procedure for fentanyl. The Janssen synthesis route is difficult to perform and is beyond the rudimentary skills of most clandestine laboratory operators. Only individuals who have acquired advanced chemistry knowledge and skills have successfully used this synthesis route. Forensic laboratories can determine whether fentanyl was manufactured illicitly by the Janssen route by detecting the impurity benzylfentanyl in the tested fentanyl drug exhibit.

In the early 1980s, an alternate route for fentanyl synthesis was published in the scientific literature; it uses N-phenethyl-4-piperidone (NPP) as the starting material. The NPP synthesis route is described on the Internet and is referred to as the Siegfried method. The chemical intermediary ANPP is produced during the synthesis and is the immediate precursor used in the illicit manufacture of fentanyl in the last stage of the Siegfried method. The Chemical Abstracts Service Registry Number[1] (CASRN) for ANPP is 21409–26–7. The detection of the impurity 4-anilino-N-phenethyl-4-piperidine (ANPP) without the presence of benzylfentanyl in the fentanyl drug exhibit suggests that the fentanyl was manufactured by the Siegfried method (or a modified version) that produces the precursor ANPP and then converts ANPP directly to fentanyl. (A small amount of ANPP is not consumed in the last reaction in the synthesis, and thus a trace amount of ANPP remains in the fentanyl.)

The increase in street-level fentanyl may be the result of the relative ease with which fentanyl can be produced via the Siegfried method and the widespread distribution of the Siegfried method on the Internet. Preliminary data indicate that the majority of the deaths in the current fentanyl outbreak have resulted from the distribution of

[1] The Chemical Abstracts Service Registry Number (CASRN) is created by the Chemical Abstracts Service (CAS) Division of the American Chemical Society and is part of an automated information system housing data and information on specific, definable chemical substances. The CASRN provides consistent and unambiguous identification of chemicals and facilitates sharing of chemical information.

illicit fentanyl made by the Siegfried method and marked by traces of ANPP rather than benzylfentanyl.

Role of ANPP in Synthesis of Fentanyl

Since 2000, four of the five domestic fentanyl clandestine laboratories seized by law enforcement agents have used the Siegfried method or a modified version of the Siegfried method in manufacturing fentanyl. The amount of illicit fentanyl and precursor chemicals found at these four laboratories could have generated a total of 5,800 grams of illicit fentanyl. Since fentanyl is potent in sub-milligram quantities, the subsequent ''cutting'' of 5,800 grams of illicit fentanyl would be sufficient to make about 46 million fentanyl doses.

The precursor chemical NPP is the starting material utilized in the Siegfried method of synthesizing fentanyl, both in industry and in illicit drug laboratories. Under a separate rulemaking published April 23, 2007 (72 FR 20039), DEA has controlled the precursor NPP as a List I chemical under the regulatory control provisions of the CSA (21 CFR part 1300).

During the production process, the starting material, NPP, is subjected to a series of chemical reactions in order to produce the intermediary chemical ANPP. The ANPP is then subjected to a simple chemical reaction resulting in the synthesis of fentanyl. DEA has not identified any industrial uses for ANPP and believes that ANPP is only produced as a chemical intermediary in the production of fentanyl, either in the legitimate production of pharmaceutical fentanyl or the illicit production of fentanyl in clandestine laboratories. ANPP is, therefore, an immediate chemical intermediary in the synthesis of fentanyl and is produced primarily for this purpose.

DEA is proposing to control ANPP as a schedule II controlled substance in an effort to prevent its use in production of illicit fentanyl. DEA believes control is necessary to prevent unscrupulous chemists from synthesizing and distributing ANPP (as an unregulated material), and selling it through the Internet and other channels to individuals who may wish to acquire an unregulated precursor for fentanyl synthesis. DEA believes this action is also advisable in order to deter the theft of ANPP from legitimate pharmaceutical firms where it is generated in the course of fentanyl production. It has been determined by DEA's Office of Forensic Sciences that ANPP can also be produced through synthetic pathways that do not require NPP as the starting material. Therefore, DEA believes that controlling ANPP directly is necessary to prevent the illicit production of fentanyl.

Designation as an Immediate Precursor

Under 21 U.S.C. 811(e), the Attorney General may place an immediate precursor into the same schedule as the controlled substance that the immediate precursor is used to make. The substance must meet the requirements of an immediate precursor under 21 U.S.C. 802(23). The term ''immediate precursor'' as defined in 21 U.S.C. 802(23) means a substance:

(A) Which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) Which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) The control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

DEA finds that ANPP meets the three criteria for the definition of an immediate precursor under 21 U.S.C 802(23). First, DEA finds that ANPP is produced primarily for use in the manufacture of the schedule II controlled substance fentanyl. As stated in the preceding section, under the Siegfried method, ANPP is typically produced from the starting material NPP and is then subjected to a simple one-step chemical reaction to obtain the schedule II controlled substance fentanyl. DEA has not identified any industrial or other uses for ANPP and believes that it is produced primarily during the synthesis of fentanyl.

Second, DEA finds that ANPP is an immediate chemical intermediary used in the manufacture of the controlled substance fentanyl. As stated earlier, ANPP is produced as an intermediary in the fentanyl synthetic pathway. After it is synthesized, the ANPP is subjected to a simple chemical reaction that converts it directly to fentanyl.

Third, DEA finds that controlling ANPP is necessary to prevent, curtail, and limit the unlawful manufacture of the controlled substance fentanyl. As noted above, DEA believes this action is necessary to assist in preventing the possible theft of ANPP from legitimate pharmaceutical firms where it is a chemical intermediary generated for fentanyl production. As a schedule II substance, ANPP will be safeguarded to the same degree that pharmaceutical firms now safeguard the fentanyl that they produce. DEA believes this increased level of security is necessary to prevent diversion of ANPP.

As noted previously, ANPP can also be produced through synthetic pathways that do not require NPP as the precursor material. Accordingly, DEA believes control is necessary to prevent unscrupulous chemists from synthesizing ANPP and selling it (as an unregulated material) through the Internet and other channels to individuals who may wish to acquire an unregulated precursor for fentanyl synthesis, in order to circumvent the regulation of NPP as a List I chemical.

DEA believes that the control of ANPP is necessary to prevent its production and use in the illicit production of fentanyl. Therefore, DEA is proposing the designation of ANPP as an immediate precursor of fentanyl pursuant to 21 U.S.C. 802(23) and 21 U.S.C. 811(e).

Proposed Placement in Schedule II—Findings Required Under CSA Immediate Precursor Provisions

Under the authority in 21 U.S.C. 811(e), once ANPP is designated as an immediate precursor under 21 U.S.C. 802(23), it may be placed directly into schedule II (or a schedule with a higher numerical designation). The immediate precursor provision in 21 U.S.C. 811(e) permits DEA to schedule an immediate precursor ''without regard to the findings required by'' § 811(a) or section 812(b) and ''without regard to the procedures'' prescribed by section 811(a) and (b). Accordingly, DEA need not address the ''factors determinative of control'' in section 811 or the findings required for placement in schedule II in section 812(b)(2).[2]

Furthermore, if ANPP is designated as an ''immediate precursor'' for the schedule II controlled substance fentanyl, section 811(e) specifies that DEA does not need to make the findings

[2] Under administrative scheduling of a substance pursuant to 21 U.S.C. 811(c), DEA must consider the ''factors determinative of control.'' The DEA must consider the following factors with respect to each drug or other substance proposed to be controlled in a schedule:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the drug or other substance;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled.

21 U.S.C. 811(e) specifies that none of these factors must be considered, however, in the control of an ''immediate precursor.''

required under section 812(b)(2) for schedule II controlled substances.[3]

Based on the finding that ANPP is an ''immediate precursor'' for fentanyl, DEA proposes to place ANPP directly into schedule II. Therefore, DEA is not seeking comments regarding these factors and findings.

Requirements for Handling Schedule II Substances

The proposed scheduling of ANPP as an immediate precursor would subject ANPP to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule II controlled substance. Therefore, DEA is soliciting comment from manufacturers, distributors, importers, exporters, and researchers on the regulatory burden to legitimate commercial activities that would result from the proposed placement of ANPP in schedule II of the CSA.

To date DEA has not identified any legitimate industrial use for ANPP, other than its role as an intermediary chemical in the production of fentanyl by the pharmaceutical industry. If ANPP is used only to manufacture fentanyl, the potential regulation of ANPP as an immediate precursor will not represent a new, major regulatory burden because fentanyl manufacturers have already implemented the CSA requirements for schedule II substances. For example, since fentanyl is a schedule II controlled substance, these firms will already be schedule II registrants and will already have adequate schedule II security. As a result of this rulemaking, these firms will need to begin storing ANPP under the same security controls already used for the final product fentanyl. The impact upon legitimate industry of controlling ANPP as a schedule II substance should be minimal. If ANPP is placed in schedule II, the regulatory requirements will include the following:

Registration. Any person who manufactures, distributes, dispenses, imports, or exports ANPP, engages in research with respect to ANPP, or proposes to engage in such activities would be required to submit an application for schedule II registration in accordance with 21 CFR part 1301.

Security. ANPP would be subject to schedule II security requirements. In order to prevent diversion, ANPP would have to be manufactured, distributed, and stored in accordance with the standards for physical security and the operating procedures set forth in 21 CFR 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.

This rule does not propose any new security requirements for schedule II controlled substances. The following existing security requirements are provided for informational purposes only.

Existing DEA physical security regulations require that, for schedule I and II controlled substances, raw material, bulk materials awaiting further processing, and finished products be stored in either a safe or steel cabinet (if the quantity is small) or in a vault (21 CFR 1301.72). DEA regulations set forth specific requirements regarding these structures. Controlled substances must be stored in these facilities during the manufacturing process except where a continuous manufacturing process should not be interrupted (21 CFR 1301.73). Secure storage areas are required to have an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or to a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or other protection as approved by DEA (21 CFR 1301.72(a)(1)(iii), 1301.72(a)(3)(iv)). The controlled substances storage areas are required to be accessible only to an absolute minimum number of specifically authorized employees (21 CFR 1301.72(d)). When it is necessary for other personnel or guests to be present in, or pass through, such secure areas, the registrant shall provide for adequate observation of the area by an employee (21 CFR 1301.72(d), 1301.73(c)).

Labeling and Packaging. All labels and labeling for commercial containers of ANPP that are distributed would be required to comply with the requirements of 21 CFR 1302.03–1302.07.

Quotas. Quotas for ANPP would be established pursuant to 21 CFR part 1303.

Inventory. Every registrant who possesses any quantity of ANPP would be required to keep an inventory of all stocks of the substance on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11.

Records. All registrants would be required to keep records pursuant to 21 CFR 1304.03, 1304.04, and 1304.21–1304.23.

Reports. All registrants would be required to submit reports in accordance with 21 CFR 1304.33.

Orders. All registrants involved in the distribution of ANPP would be required to comply with the order requirements of 21 CFR part 1305.

Importation and Exportation. All registrants involved in the importation and exportation of ANPP would be required to comply with 21 CFR part 1312.

Prescriptions. All prescriptions for ANPP or prescriptions for products containing ANPP would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 21 CFR 1306.11–1306.15.

Criminal Liability. Any activity with ANPP in violation of or not authorized under the Controlled Substances Act or the Controlled Substances Import and Export Act would be unlawful and potentially subject to criminal penalties (21 U.S.C. §§ 841–863 and 959–964).

Solicitation of Information

As part of this rulemaking, DEA is soliciting information on any possible legitimate uses of ANPP unrelated to fentanyl (including industrial uses) in order to assess the potential commercial impact of scheduling ANPP. DEA has searched information in the public domain for legitimate uses of ANPP and has not documented any legitimate commercial uses for ANPP other than as an intermediary chemical in the production of fentanyl. DEA seeks, however, to document any unpublicized use(s) and other proprietary use(s) of ANPP that are not in the public domain. Therefore, DEA is soliciting comment on the uses of ANPP in the legitimate marketplace.

DEA is soliciting input from all potentially affected parties regarding: (1) The types of legitimate industries using ANPP; (2) the legitimate uses of ANPP; (3) the size of the domestic market for ANPP; (4) the number of manufacturers of ANPP; (5) the number of distributors of ANPP; (6) the level of import and export of ANPP; (7) the potential burden these proposed regulatory controls of ANPP may have on legitimate commercial activities; (8) the potential number of individuals/firms that may be adversely affected by these proposed regulatory controls (particularly with respect to the impact on small businesses); and (9) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of ANPP by industry and others. DEA invites all interested parties to provide any information on any legitimate uses of ANPP in industry, commerce, academia, research and

[3] The findings for schedule II include (A) the drug or other substance has a high potential for abuse; (B) the drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and (C) abuse of the drug or other substance may lead to severe psychological or physical dependence.

development, or other applications. DEA seeks both quantitative and qualitative data.

Handling of Confidential or Proprietary Information

Confidential or proprietary information may be submitted as part of a comment regarding this Notice of Proposed Rulemaking. Please see the ''POSTING OF PUBLIC COMMENTS'' section above for a discussion of the identification and redaction of confidential business information and personally identifying information.

Regulatory Certifications

Regulatory Flexibility and Small Business Concerns

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to determine whether a proposed rule will have a significant economic impact on a substantial number of small entities. If an agency finds that there is a significant economic impact on a substantial number of small entities, the agency must consider whether alternative approaches could mitigate the impact on small entities. The size criteria for small entities are defined by the Small Business Administration (SBA) in 13 CFR 121.201.

DEA has not identified any legitimate industrial use for ANPP, other than its role as an intermediary chemical in the production of fentanyl by the pharmaceutical industry. DEA has not identified any firms that import, export, or distribute ANPP. If ANPP is used only to manufacture fentanyl, the potential regulation of ANPP as an immediate precursor will not represent a new, major regulatory burden, because fentanyl manufacturers have already implemented the CSA requirements for the handling of schedule II substances. Consequently, DEA believes the proposed rule will not have a significant economic impact on a substantial number of small entities. However, DEA is nonetheless seeking comment on whether there are uses for ANPP not known to DEA that could be impaired by this proposed rule and result in a significant economic impact on a substantial number of small entities.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

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 $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost 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 and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.12 is proposed to be amended by adding a new paragraph (g)(3) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(g) * * *

(3) Immediate precursor to fentanyl:

(i) 4-anilino-N-phenethyl-4-piperidine (ANPP) 8333

(ii) [Reserved]

Dated: March 14, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–7391 Filed 4–8–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 26, 27

RIN 1076–AE88

Job Placement and Training

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This rule would consolidate requirements governing the Employment Assistance Program and the Adult Vocational Training Program. These programs assist Indian people to obtain job skills and to obtain and retain permanent employment. Combining these regulations will be consistent with changes to the Department's budget, which has combined these two regulations into one line item.

DATES: Submit comments on or before *July 8, 2008.*

ADDRESSES: Comments should be sent to Robert W. Middleton, PhD, Director, Office of Indian Energy and Economic Development, either by facsimile at (202) 208–4564, or by mail to 1951 Constitution Avenue, NW., Mailstop 20–SIB, Washington, DC 20245 or via the Federal rule making portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments on the information collection burden, including comments on or requests for copies of the [name of application form], are separate from those on the substance of the rule.

Send comments on the information collection burden to: Desk Officer for the Department of the Interior Office of Management & Budget, e-mail: *oira_docket@omb.eop.gov*, or (202) 395–6566 (fax). Please also send a copy of your comments to BIA at one of the addresses shown above.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Lynn Forcia, Chief, Division of Workforce Development, telephone (202) 219–5270 or Jody Garrison, Manpower Development Specialist, at (202) 208–2685.

SUPPLEMENTARY INFORMATION:

I. Background
II. Statutory Authority
III. Procedural Requirements
A. Civil Justice Reform (Executive Order 12988)
B. Regulatory Planning and Review (Executive Order 12866)
C. Regulatory Flexibility Act
D. Takings (Executive Order 12630)
E. Federalism (Executive Order 13132)

F. National Environmental Policy Act
G. Unfunded Mandates Act of 1995
H. Paperwork Reduction Act of 1995
I. Consultation With Indian Tribes (Executive Order 13175)
J. Small Business Regulatory Enforcement Fairness Act (SBREFA)
K. Data Quality Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of This Regulation
N. Public Availability of Comments
III. Drafting Information

I. Background

The President's Regulatory Reform Initiative requires Federal agencies to streamline the regulatory process, to remove obsolete regulations, and to reduce the regulatory burden on the public. This rule would consolidate requirements governing the Employment Assistance Program and the Adult Vocational Training Program into one ''Job Placement and Training Program.'' This revision is consistent with the Department of the Interior's budget, which has integrated the two programs, Adult Vocational Training and the Direct Employment programs, into one comprehensive line item: The Job Placement and Training Program. The revision of this regulation was previously recommended by the Public Law 102–477 Tribal Work Group, tribes, and BIA program staff and is part of the President's Regulatory Reform Initiative. The purpose of the Department of the Interior's Job Placement and Training Program is to enhance employment opportunities for eligible Indians and to provide related services as necessary for them to gain full self-sufficiency or non-subsidized employment. The program services are not intended to duplicate or supplant other job placement or training authorities, resources, or services, but are designed to complement and supplement where there may be gaps in an individual self-sufficiency plan. This program's emphasis will focus on individual self-sufficiency through the implementation of a well-conceived plan that is designed to improve the individual's standard of living. The program may be administered through the Self-Determination or Self-Governance process, Public Law 102–477 Tribal Plan authority, or other similar authorities.

We have developed the proposed draft regulations working with tribal representatives. During our National Public Law 102–477 conference in Reno, Nevada held from October 30–November 1, 2007, the proposed draft regulations and their effect on Job Placement and Training were discussed. Three hundred twenty-eight individuals attended the conference. The proposed regulations were also discussed at the Annual Alaska Bureau Service Providers conference in November 2007. We received numerous comments throughout a previous informal review process for more than the past five years. Some comments recommended more clarity or consistency and more detail or additional language in order to better clarify the Job Placement and Training Program. We have attempted to incorporate these comments whenever possible.

Publication of the proposed rule by the Department of the Interior (Department) provides the public with an opportunity to participate in the rule-making process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

II. Statutory Authority

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

III. Procedural Requirements

A. Civil Justice Reform (Executive Order 12988)

The Department has certified to the Office of Management and Budget (OMB) that this proposed rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule:

(a) 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

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

B. Regulatory Planning and Review (Executive Order 12866)

This proposed rule is not a significant regulatory action and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

(a) This rule will not have an effect of $100 million or more on the economy. Further, this rule 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 combines two programs into one, reflecting a change to the Department's budget, which consolidated funding for the two programs into one line item. The purpose of the program is to assist eligible clients to obtain job skills and to find and retain a job leading to self-sufficiency. Any effect on productivity, competition, jobs, and tribal governments or communities will be positive.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule encourages coordination with other agency programs offering job training and placement assistance. For example, the rule states that the Bureau will consider other available resources, including those offered by other agencies, in determining financial need; allows the Bureau or tribal service provider to enter into agreements with appropriate Federal, state, or local government agencies, among other organizations, to provide facilities and services required for vocational training programs; and encourages partnering with similar programs and resources that may be offered by other agencies or organizations.

(c) 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 does not alter any budgetary effects or the rights or obligations of recipients to job placement and training services; the rule merely consolidates programs to reflect consolidation into one budget line item.

(d) This rule does not raise novel legal or policy issues. The Bureau and tribal service providers have been providing the types of services covered by this now consolidated rule and the legal and policy basis for providing these services has been well established.

C. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule offers job training and placement assistance to certain eligible individuals and will not affect small entities.

D. Takings (Executive Order 12630)

The Department has determined that this proposed rule does not have significant ''takings'' implications. The proposed rule does not pertain to ''taking'' of private property interests, nor does it affect private property.

E. Federalism (Executive Order 13132)

The Department has determined that this proposed rule does not have

significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states. Therefore, a Federalism Assessment is not required.

F. National Environmental Policy Act

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

G. Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995. Additionally, this rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule addresses a program that offers assistance to eligible individuals to obtain job skills and to find and retain a job leading to self-sufficiency; it does not require any action or service by any governmental or private entity. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

H. Paperwork Reduction Act of 1995

The information collection requirements contained in the proposed regulations have been submitted to the Office of Management and Budget (OMB) for reinstatement under 44 U.S.C. 3504(h). The agency may not collect information and an individual need not respond if there is no valid OMB clearance number identified on the form. Applications for training assistance must be submitted on an application form obtained from a local Bureau of Indian Affairs agency or a tribal contractor office. This information is collected to determine whether an Indian person is eligible to participate in the Employment Assistance program, to determine the amount of assistance needed, to determine whether the client is successful in completing the program, to determine whether the training resulted in obtaining a job, and to determine if the training resulted in an earnings gain. A response is required to obtain a benefit. Preparation of the application is estimated to take 30 minutes at a cost of $10 per respondent.

CFR section	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost of responses
26.5	4,900	1	4,900	.50	2,450	$24,500

Individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, e-mail: *oira_docket@omb.eop.gov* or (202) 393–6566 (fax). Attention: Desk Office for the U.S. Department of the Interior. The Department considers comments by the public on this proposed collection of information in:

(a) Evaluating 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;

(b) Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(d) Minimizing the burden of the information collection on those who are to respond, including using appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

I. Consultation With Indian Tribes (Executive Order 13175)

In accordance with Executive Order 13175, we have identified potential effects on federally recognized Indian tribes that will result from this rule. This rule will affect those tribes that provide job placement and training programs by consolidating the two CFR parts that had previously governed the assistance they provide. Accordingly:

(a) During the week of October 27, 2007 we met with tribes at the National Public Law 102–477 Conference to discuss changes in the regulations. We also discussed proposed changes during the Annual Alaska Providers Service Conference in November 2007. The proposed regulations have been a topic of discussion with tribes for more than the past five years. The proposed changes were discussed at the annual Adult Vocational Training Conference sponsored by Sinte Gleska College for several years.

(b) We will fully consider tribal views in the final rule.

J. 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:

(a) Does not have an annual effect on the economy of $100 million or more. This rule combines two programs into one, reflecting a change to the Department's budget, which consolidated funding for the two programs into one line item.

(b) 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 will not affect costs or prices because it relates only to a job training and assistance program for eligible individuals.

(c) 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. The purpose of this rule's program is to assist eligible clients to obtain job skills and to find and retain a job leading to self-sufficiency. Any effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises will be positive, by providing more individuals with needed skills and job experience.

K. 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).

L. 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.

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Drafting Information

The primary author of this document is Lynn Forcia, Division of Workforce Development.

List of Subjects in 25 CFR Parts 26 and 27

Employment, Grant programs—Indians, Indians—Adult education, Indians—Vocational education, Manpower training programs—Occupational training.

Dated: February 14, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

For the reasons given in the preamble, under the authority of 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9, the Department of the Interior proposes to amend Part 26 and Part 27 of Title 25, Chapter I of the Code of Federal Regulations as set forth below.

Title 25—Indians

Chapter I—Bureau of Indian Affairs, Department of the Interior

1. Revise part 26 to read as follows:

PART 26—JOB PLACEMENT AND TRAINING PROGRAM

Subpart A—General Applicability

Sec.

26.1 What terms do I need to know?
26.2 Who authorizes this collection of information?
26.3 What is the purpose of the Job Placement and Training Program?
26.4 Who administers the Job Placement and Training Program?
26.5 Who may be eligible for Job Placement and Training?
26.6 Who is eligible to receive financial assistance?
26.7 How is financial need established?
26.8 Where do I go to apply for Job Placement and Training assistance?
26.9 How do I apply for assistance?
26.10 When will I find out if I have been selected for Job Placement and Training assistance?
26.11 What type of Job Placement and Training assistance may be approved?
26.12 Who provides the Job Placement and Training?
26.13 How long may I be in training and how long can I receive other assistance?
26.14 What or who is a service provider?
26.15 What makes an applicant eligible for Job Placement and Training services?
26.16 If I am awarded financial assistance, how much will I receive?
26.17 Can more than one family member be financially assisted at the same time?
26.18 What kind of supportive services are available?
26.19 Will I be required to contribute financially to my employment and training goals?
26.20 Can I be required to return portions of my grant?
26.21 Can this program be combined with other similar programs for maximum benefit?
26.22 May we integrate Job Placement and Training funds into our Public Law 102–477 Plan?
26.23 What is an Individual Self-Sufficiency Plan (ISP)?

Subpart B—Job Placement Services

26.24 What is the scope of the Job Placement Program?
26.25 What constitutes a complete Job Placement Program application?
26.26 What job placement services may I receive?
26.27 What kind of job placement support services can I expect?
26.28 What follow-up services are available after I become employed?

Subpart C—Training Services

26.29 What is the scope of the Job Training Program?
26.30 Does the Job Training Program provide part-time training or short-term training?
26.31 May I repeat my job training?
26.32 What constitutes a complete Job Training Program application?
26.33 How do I show that I need job training?
26.34 What type of job training assistance may be approved?
26.35 What kind of support services are available to me?
26.36 What follow-up service is available after I complete training?
26.37 Are there training standards that I must follow?

Subpart D—Appeal by an Applicant

26.38 May I appeal a decision about my application?

Authority: 25 U.S.C. 13; Sec. 1, Pub. L. 84–959, 70 Stat. 966 as amended by Pub. L. 88–230, 77 Stat. 471 (25 U.S.C. 309).

Subpart A—General Applicability

§ 26.1 What terms do I need to know?

As used in this part:

Bureau means the Bureau of Indian Affairs (BIA).

Department means the Department of the Interior.

Gainful Employment means work resulting in self-sufficiency.

Indian means any person who is a member of a federally-recognized tribe, including Alaska Natives.

Individual Self-Sufficiency Plan (ISP) means a written plan designed to meet the goal of employment through specific actions that meet the needs of the individual. The plan is jointly developed and is signed by both the client and the servicing office. The ISP addresses the client's barriers to employment and a plan of action to address barriers.

Must means a mandatory act or requirement.

On or Near Reservation means those areas or communities adjacent or contiguous to reservations, or service areas where Job Training and Placement programs are provided upon approval of the Assistant Secretary—Indian Affairs or his designated representative.

On-the-Job-Training (OJT) means a written agreement for an employer to provide training to a participant who engages in productive work that provides knowledge or skills essential to the full and adequate performance of the job. The employer receives reimbursement from the Job Training Program for the wage rate of the participant. OJT may last as long as needed to meet the goal(s) in the participant's ISP.

Permanent Employment means a year-round job or one that re-occurs seasonally, lasting at least 90 days per work season.

Service Area means a location agreed to by the tribe with the Bureau to provide Job Training and Placement Services.

Servicing Office means the Bureau office or the office of the tribal service provider that administers the Job Training and Placement Program.

Tribal Governing Body means the recognized entity empowered to exercise governmental authority over a federally recognized tribe.

Tribal Service Provider means a tribe or tribal organization that administers the Job Training and Placement Program pursuant to Public Law 93–638 or Public Law 102–477.

Tribe means any tribal entity listed in the **Federal Register** notice that the Secretary of the Interior publishes under Public Law 103–454, 108 Stat. 4791.

Underemployed means an individual who is working but whose income is insufficient to meet essential needs.

Unemployed means an individual who is not currently working or employed.

Unmet need means the difference between available resources and the cost associated with finding gainful employment.

Vocational Training means technical training that leads to permanent and gainful employment.

We, us or our means the Secretary of the Interior, or an official in the Office of the Assistant Secretary—Indian Affairs, or an official in the Bureau of Indian Affairs to whom the Secretary has delegated authority.

§ 26.2 Who authorizes this collection of information?

The information collection requirement contained in § 26.9 has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number OMB 1076–0062. This information is collected to determine whether an Indian person is eligible to participate in the Job Placement and Training Program and to determine the amount of assistance needed.

§ 26.3 What is the purpose of the Job Placement and Training Program?

The purpose of the Job Placement and Training Program is to assist eligible clients to obtain job skills and to find and retain a job leading to self-sufficiency.

§ 26.4 Who administers the Job Placement and Training Program?

The Job Placement and Training Program is administered by the Bureau of Indian Affairs or a tribal service provider. Tribes are encouraged to provide services directly to Indians by either entering into a Public Law 93–638 contract with the Bureau or a compact with the Office of Self-Governance. Tribes may also consolidate Job Placement and Training Program funds in accordance with the provisions of the Indian Employment, Training, and Related Services Demonstration Act of 1992, Public Law 102–477.

§ 26.5 Who may be eligible for Job Placement and Training?

You may apply for assistance for employment or training if all of the following criteria are met:

(a) You meet the definition of Indian in § 26.1; and

(b) You are residing on or near an Indian reservation or in a service area; and

(c) You are unemployed or underemployed or need and can benefit from employment assistance as determined by your servicing office; and

(d) You complete an ISP.

§ 26.6 Who is eligible to receive financial assistance?

Financial assistance is only available to persons:

(a) Approved for training that will lead to permanent, gainful and meaningful employment; or

(b) Who have obtained a job and need financial assistance to retain the job, as determined by the servicing office.

§ 26.7 How is financial need established?

You must show that current income and other available resources are not sufficient to meet employment or training goals.

§ 26.8 Where do I go to apply for Job Placement and Training assistance?

You may apply for Job Placement and Training assistance at the servicing office nearest to your current residence.

§ 26.9 How do I apply for assistance?

(a) You should contact the BIA office or the tribal service provider which is nearest to your current residence to get an application form; and

(b) You must complete the application process as established by your servicing office; and

(c) You must complete and sign an ISP.

§ 26.10 When will I find out if I have been selected for Job Placement and Training assistance?

(a) Your servicing office will notify you in writing within 30 calendar days once it receives a completed job training application request; or

(b) Your servicing office will notify you within five business days once it has received a completed Job Placement application and written job offer.

§ 26.11 What type of Job Placement and Training assistance may be approved?

Services provided may include funding for employment, training or supplemental assistance that supports job placement or training activities (see subpart B of this part for Job Placement or subpart C of this part for Training Services).

§ 26.12 Who provides the Job Placement and Training?

The Bureau or a tribal service provider may enter into contracts or agreements to provide facilities and services required for vocational training programs with:

(a) Indian tribal governing bodies. Training programs not operated by the tribe may be approved by the tribal service provider.

(b) Appropriate Federal, state, or local government agencies;

(c) Public or private schools with a recognized reputation in vocational education and successfully obtaining employment for graduates;

(d) Education firms that operate residential training centers; and

(e) Corporations and associations or small business establishments with apprenticeship or on-the-job training programs leading to a skilled employment.

§ 26.13 How long may I be in training and how long can I receive other assistance?

(a) Your training at any approved institution, apprenticeship, and/or on-the-job training must not exceed 24 months (see § 26.18 for full-time definition) of full-time actual training hours.

(b) Registered nurse training must not exceed 36 months of full actual training hours.

(c) You may receive other financial assistance under this program determined by your ISP that you have developed with your tribal service provider.

§ 26.14 What or who is a service provider?

A service provider is an administrative unit of a BIA Regional Office, a BIA Agency Office, a BIA Field Office, a Tribal contracted office, or Alaska Native Federally Recognized Tribe, or a tribal organization, that provides grants to help offset the cost of vocational or technical training (at approved places), or immediate job placement services. To the extent resources will allow, other kinds of support service may also be available.

§ 26.15 What makes an applicant eligible for Job Placement and Training services?

A person is eligible for services if the applicant meets the definition of an American Indian or Alaska Native, who can demonstrate an unmet need and show a need for job training or placement services in order to become gainfully and meaningfully employed. Someone who is skilled, but needs financial assistance to get to a job, and one who shows an aptitude and potential to benefit from this service is also eligible for services.

§ 26.16 If I am awarded financial assistance, how much will I receive?

(a) The amount of financial assistance you receive depends on your unmet needs. If applicable, you should apply for:

(1) A Pell Grant if your training institution offers this grant.

(2) Other education grants or loans for which you may qualify.

(b) The Bureau or tribal service provider will award financial assistance up to the level of your unmet need to the extent resources are available. It is possible that the combination of available financial assistance will not equal your financial need.

§ 26.17 Can more than one family member be financially assisted at the same time?

Yes, more than one family member can be assisted, providing that each applicant is eligible.

§ 26.18 What kinds of supportive services are available?

The BIA or tribal service provider may provide, but is not limited to, the following:

(a) Assistance in completing an application form and supporting documents.

(b) A description of the Job Placement and Training Program and related services.

(c) An assessment of eligibility.

(d) An assessment of need for employment services (or a combination of training and employment services).

(e) The creation of an ISP (which may include training and other support services).

(f) Counseling services that address cultural differences and strengthen probability of client success.

(g) Referral to other appropriate services.

(h) Youth work experience.

(i) Tools for employment.

(j) Initial union dues.

(k) Transportation of household effects.

(l) Security and safety deposits.

(m) Items to improve personal appearance such as professional work clothing.

(n) Housewares such as bedding and appliances.

(o) Childcare.

§ 26.19 Will I be required to contribute financially to my employment and training goals?

Yes, Job Placement and Training Program clients are required to seek other funding, including the use of personal resources as a condition of their ISP.

§ 26.20 Can I be required to return portions of my grant?

Yes, grants are awarded for a specific purpose as described in the applicant's ISP. If the funds cannot be spent according to the ISP, the unused portion must be immediately returned to the service provider's job placement and training budget.

§ 26.21 Can this program be combined with other similar programs for maximum benefit?

Yes, combining this program with other programs is encouraged, to the extent that laws governing program services permit partnering with similar programs and resources.

§ 26.22 May we integrate Job Placement and Training funds into our Public Law 102–477 Plan?

Yes, tribes may integrate Job Placement and Training Program funds into their Public Law 102–477 Plan.

§ 26.23 What is an Individual Self-Sufficiency Plan (ISP)?

(a) An ISP is a document that:

(1) Spells out the details necessary for a client to assume a meaningful job (usually within a short period);

(2) Supplements the application process and includes needed finances, special clothing, transportation, and support services necessary for employment;

(3) Identifies all financial resources and defines the employment or training objective and activities planned to reach the objective;

(4) Outlines how the applicant will participate in job placement, where resources will allow.

(b) The employer's job information and offer should be attached to the ISP, which becomes a part of the application (and supporting documents).

(c) The ISP must indicate that the services received will meet the individual's and tribal goals.

Subpart B—Job Placement Services

§ 26.24 What is the scope of the Job Placement Program?

The Job Placement Program assists Indian people who have job skills to obtain and retain gainful employment toward self-sufficiency.

§ 26.25 What constitutes a complete Job Placement Program application?

(a) An application form signed by the applicant and servicing office representative.

(b) An ISP, including a list of goods and services needed to get the applicant to the job, signed by the applicant and servicing representative.

(c) An accepted official document that shows the formal relationship between the applicant and a federally-recognized tribe and/or a document that shows an applicant's eligibility for services.

(d) A statement by the service provider that the applicant has been declared eligible for services.

(e) A financial statement that reflects the applicants' unmet need.

(f) An employer certification that the applicant has been hired. The certification shall include, at a minimum: job title, beginning date, beginning wage, date first full paycheck will be issued, and expected duration of the job.

§ 26.26 What Job Placement services may I receive?

As determined by the service provider, you may receive any of the following services such as transportation to work for a limited period, funds to finalize your job resume, and job placement assistance.

§ 26.27 What kind of Job Placement support services can I expect?

Service office representatives will make the determination of what support services are necessary and to be funded. Examples of job placement support services include, but are not limited to, resume preparation, interview techniques, job retention, and related resourceful living skills.

§ 26.28 What follow-up services are available after I become employed?

As determined by the service provider, the following type of services may be available to you: temporary housing, transportation to work for a limited period of time, work clothing, and childcare.

Subpart C—Training services

§ 26.29 What is the scope of the Job Training Program?

A service provider may offer career counseling, recommend training institutions that properly prepare applicants for entry into their career field, and help prepare applicants for gainful employment to the extent program funding will allow and based on applicants' established need.

§ 26.30 Does the Job Training Program provide part-time training or short-term training?

Yes, part-time and short-term training are allowable provided the training assists individuals to develop skills necessary to acquire gainful employment, in accordance with the ISP, and depending upon availability of resources. Part-time means no less than

six credit units per semester (based on a nine-month school year).

§ 26.31 May I repeat my training?

Eligibility for repeat training and other financial assistance will be determined by your tribal service provider.

§ 26.32 What constitutes a complete Job Training Program application?

A request for training includes:
(a) Completed application form,
(b) ISP,
(c) Tribal affiliation document,
(d) Selective Service registration,
(e) Letter of acceptance from school,
(f) Statement of financial need, and
(g) Statement of eligibility.

§ 26.33 How do I show I need job training?

The need for Job Placement and Training is shown by completing an application for training and demonstrating financial need.

§ 26.34 What type of training assistance may be approved?

The following types of training that lead to gainful employment may be approved:

(a) Nationally accredited vocational training,

(b) Training and non-accredited vocational courses provided by a tribe,

(c) Training programs not operated by the tribe but approved by the service provider,

(d) Apprenticeship training supervised by a state apprenticeship agency or council or by the Federal Apprenticeship Training Service that is provided by a corporation or association that has been training bona fide apprentices for at least one year or any other apprenticeship program approved by the service provider, or

(e) On-the-job training offered by a public or private business that provides technical training.

§ 26.35 What kind of support services are available to me?

As determined by the service provider, training support services include, but are not limited to, stipends, public transportation, and childcare.

§ 26.36 What follow-up service is available after I complete training?

Job Placement assistance may follow training.

§ 26.37 Are there training standards that I must follow?

Yes, students must maintain the minimum academic requirements and be in good standing as set forth by the training institute. If an applicant is separated from training for good cause, the applicant may be responsible for repaying any portion of misused funds.

Subpart D—Appeal by an Applicant

§ 26.38 May I appeal a decision about my application?

If the servicing agency denies your application you may appeal under 25 CFR Part 2 by sending your appeal to your service provider. You will be provided with the information on how to appeal the decision in the decision letter.

PART 27—[REMOVED]

2. Remove part 27.

[FR Doc. E8–7304 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–4M–P

Notices

Federal Register

Vol. 73, No. 69

Wednesday, April 9, 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

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2008 through June 30, 2009. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

DATES: *Effective Date:* July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2590.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR Part 210), the Commodity School Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Summer Food Service Program (7 CFR Part 225) and Child and Adult Care Food Program (7 CFR Part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Guidance for School Meals Manual*, ''income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does not include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2008 through June 30, 2009. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2008 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

This Notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services figures because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year), income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual

income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous states, the District of Columbia, Guam and the territories represent an increase of 2.7% over last year's level for a family of the same size.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2008 to June 30, 2009]

Household size	Federal poverty guidelines	Reduced price meals—185%					Free meals—130%				
	Annual	Annual	Monthly	Twice per month	Every two weeks	Weekly	Annual	Monthly	Twice per month	Every two weeks	Weekly
48 Contiguous States, District of Columbia, Guam, and Territories											
1	10,400	19,240	1,604	802	740	370	13,520	1,127	564	520	260
2	14,000	25,900	2,159	1,080	997	499	18,200	1,517	759	700	350
3	17,600	32,560	2,714	1,357	1,253	627	22,880	1,907	954	880	440
4	21,200	39,220	3,269	1,635	1,509	755	27,560	2,297	1,149	1,060	530
5	24,800	45,880	3,824	1,912	1,765	883	32,240	2,687	1,344	1,240	620
6	28,400	52,540	4,379	2,190	2,021	1,011	36,920	3,077	1,539	1,420	710
7	32,000	59,200	4,934	2,467	2,277	1,139	41,600	3,467	1,734	1,600	800
8	35,600	65,860	5,489	2,745	2,534	1,267	46,280	3,857	1,929	1,780	890
For each add'l family member, add	3,600	6,660	555	278	257	129	4,680	390	195	180	90
Alaska											
1	13,000	24,050	2,005	1,003	925	463	16,900	1,409	705	650	325
2	17,500	32,375	2,698	1,349	1,246	623	22,750	1,896	948	875	438
3	22,000	40,700	3,392	1,696	1,566	783	28,600	2,384	1,192	1,100	550
4	26,500	49,025	4,086	2,043	1,886	943	34,450	2,871	1,436	1,325	663
5	31,000	57,350	4,780	2,390	2,206	1,103	40,300	3,359	1,680	1,550	775
6	35,500	65,675	5,473	2,737	2,526	1,263	46,150	3,846	1,923	1,775	888
7	40,000	74,000	6,167	3,084	2,847	1,424	52,000	4,334	2,167	2,000	1,000
8	44,500	82,325	6,861	3,431	3,167	1,584	57,850	4,821	2,411	2,225	1,113
For each add'l family member, add	4,500	8,325	694	347	321	161	5,850	488	244	225	113
Hawaii											
1	11,960	22,126	1,844	922	851	426	15,548	1,296	648	598	299
2	16,100	29,785	2,483	1,242	1,146	573	20,930	1,745	873	805	403
3	20,240	37,444	3,121	1,561	1,441	721	26,312	2,193	1,097	1,012	506
4	24,380	45,103	3,759	1,880	1,735	868	31,694	2,642	1,321	1,219	610
5	28,520	52,762	4,397	2,199	2,030	1,015	37,076	3,090	1,545	1,426	713
6	32,660	60,421	5,036	2,518	2,324	1,162	42,458	3,359	1,770	1,633	817
7	36,800	68,080	5,674	2,837	2,619	1,310	47,840	3,987	1,994	1,840	920
8	40,940	75,739	6,312	3,156	2,914	1,457	53,222	4,436	2,218	2,047	1,024
For each add'l family member, add	4,140	7,659	639	320	295	148	5,382	449	225	207	104

Authority: 42 U.S.C. 1758(b)(1).

Dated: April 4, 2008.

Roberto Salazar,

Administrator.

[FR Doc. E8–7475 Filed 4–8–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5 and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218.4 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: James W. Bennett, Regional Appeal Review Team Manager, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404/347–2788.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215

and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR parts 215 and 217. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution,* published daily in Atlanta, GA.

Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama, *Montgomery Advertiser,* published daily in Montgomery, AL. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District:
Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District:
The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District:
The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District:
The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District:
The Daily Home, published daily in Talladega, AL.

Tuskegee Ranger District:
Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Blue Ridge Ranger District:
The News Observer (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.
North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.
The Dahionega Nuggett, (secondary) published weekly (Wednesday) in Dahionega, GA.
Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.

Conasauga Ranger District:
Daily Citizen, published daily in Dalton, GA.

Chattooga Ranger District:
The Northeast Georgian, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.
Clayton Tribune, (newspaper of record) published weekly (Thursday) in Clayton, GA.
The Toccoa Record, (secondary) published weekly (Thursday) in Toccoa, GA.
White County News, (secondary) published weekly (Thursday) in Cleveland, GA.

Oconee Ranger District:
Eatonton Messenger, published weekly (Thursday) in Eatonton, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions

Nolichucky-Unaka Ranger District:
Greeneville Sun, published daily (except Sunday) in Greeneville, TN.

Ocoee-Hiwassee Ranger District:
Polk County News, published weekly (Wednesday) in Benton, TN.

Tellico Ranger District:
Monroe County Advocate & Democrat, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.

Watauga Ranger District:
Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions

Cumberland Ranger District:
Lexington Herald-Leader, published daily in Lexington, KY.

London Ranger District:
The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Redbird Ranger District:
Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

Stearns Ranger District:
McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

El Yunque National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.
San Juan Star, published daily in English in San Juan, PR.

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions

Apalachicola Ranger District:
Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District:
The Ocala Star Banner, published daily in Ocala, FL.

Osceola Ranger District:
The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.

Seminole Ranger District:
The Daily Commercial, published daily in Leesburg, FL.

Wakulla Ranger District:
The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Ranger Decisions

Andrew Pickens Ranger District:
The Daily Journal, published daily (Tuesday through Saturday) in Seneca, SC.
Enoree Ranger District:
Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.
Long Cane Ranger District:
Index-Journal, published daily in Greenwood, SC.
Wambaw Ranger District:
Post and Courier, published daily in Charleston, SC.
Witherbee Ranger District:
Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions

Clinch Ranger District:
Coalfield Progress, published bi-weekly (Tuesday and Thursday) in Norton, VA.
North River Ranger District:
Daily News Record, published daily (except Sunday) in Harrisonburg, VA.
Glenwood-Pedlar Ranger District:
Roanoke Times, published daily in Roanoke, VA.
James River Ranger District:
Virginian Review, published daily (except Sunday) in Covington, VA.
Lee Ranger District:
Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.
Mount Rogers National Recreation Area:
Bristol Herald Courier, published daily in Bristol, VA.
Eastern Divide Ranger District:
Roanoke Times, published daily in Roanoke, VA.
Warm Springs Ranger District:
The Recorder, published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA.

District Ranger Decisions

Calcasieu Ranger District:
The Town Talk, (newspaper of record) published daily in Alexandria, LA.
The Leesville Daily Leader, (secondary) published daily in Leesville, LA.
Caney Ranger District:
Minden Press Herald, (newspaper of record) published daily in Minden, LA.
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.
Catahoula Ranger District:
The Town Talk, published daily in Alexandria, LA .
Kisatchie Ranger District:
Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.
Winn Ranger District:
Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions.

Bienville Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Chickasawhay Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Delta Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
De Soto Ranger District:
Clarion Ledger, published daily in Jackson, MS.
Holly Springs Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Homochitto Ranger District:
Clarion-Ledger, published daily in Jackson, MS.
Tombigbee Ranger District:
Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions

Appalachian Ranger District:
The Asheville Citizen-Times, published daily in Asheville, NC.
Cheoah Ranger District:
Graham Star, published weekly (Thursday) in Robbinsville, NC.
Croatan Ranger District:
The Sun Journal, published daily in New Bern, NC.
Grandfather Ranger District:
McDowell News, published daily in Marion, NC.
Nantahala Ranger District:
The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.
Pisgah Ranger District:
The Asheville Citizen-Times, published daily in Asheville, NC.
Tusquitee Ranger District:
Cherokee Scout, published weekly (Wednesday) in Murphy, NC.
Uwharrie Ranger District:
Montgomery Herald, published weekly (Wednesday) in Troy, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions

Caddo-Womble Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Jessieville-Winona-Fourche Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Mena-Oden Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Oklahoma Ranger District:
(Choctaw; Kiamichi; and Tiak) *Tulsa World,* published daily in Tulsa, OK.
Poteau-Cold Springs Ranger District:
Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR .

District Ranger Decisions

Bayou Ranger District:
The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
Boston Mountain Ranger District:
Southwest Times Record, published daily in Fort Smith, AR.
Buffalo Ranger District:
Newton County Times, published weekly in Jasper, AR.
Magazine Ranger District:
Southwest Times Record, published daily in Fort Smith, AR.
Pleasant Hill Ranger District:
Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.

St. Francis National Forest:
The Daily World, published daily (Sunday through Friday) in Helena, AR.
Sylamore Ranger District:
Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest:
The Lufkin Daily News, published daily in Lufkin, TX.
Caddo & LBJ National Grasslands:
Denton Record-Chronicle, published daily in Denton, TX.
Davy Crockett National Forest:
The Lufkin Daily News, published daily in Lufkin, TX.
Sabine National Forest:
The Lufkin Daily News, published daily in Lufkin, TX.
Sam Houston National Forest:
The Courier, published daily in Conroe, TX.

Dated: April 1, 2008.

Jane L. Cottrell,

Deputy Regional Forester.

[FR Doc. E8–7310 Filed 4–8–08; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Closed Meeting

Date and Time: Wednesday, April 9, 2008, 2:45 p.m.–3:30 p.m.

Place: Radio Free Asia Conference Room, 2025 M Street, NW., Washington, DC 20036.

The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6))

For More Information Contact: Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203–4545.

Dated: April 2, 2008.

Timi Nickerson Kenealy,

Acting Legal Counsel.

[FR Doc. E8–7343 Filed 4–8–08; 8:45 am]

BILLING CODE 8610–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that an orientation meeting, briefing meeting, and planning meeting of the New Jersey Advisory Committee of the U.S. Commission on Civil Rights will convene at 10 a.m. and adjourn at 3 p.m. on Friday, April 25, 2008, at the Legislative Annex of the State House, 125 West State Street, Room 1, Trenton, New Jersey 08625–0099.

The purpose of these meetings is to inform members about the rules and procedures applicable to federal advisory committee operations, to hear presentations from experts in fair housing and other civil rights matters in the state, and to discuss the committee's future project planning.

Members of the public are entitled to submit written comments; the comments must be received in the Eastern Regional Office by May 26, 2008. The address is 624 Ninth Street, NW., Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, Secretary, 202–376–7533, TTY 202–376–8116 or by e-mail: *agreene@usccr.gov*.

Hearing impaired persons who will attend the meeting and require the service of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and the Federal Advisory Committee Act.

Dated in Washington, DC, April 3, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–7411 Filed 4–8–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT APRIL 1, 2008 THROUGH APRIL 30, 2008

Firm	Address	Date accepted for filing	Products
Hancock Lumber Co., Inc	P.O. Box 299, 4 Edes Falls Road, Casco, Maine 04015.	3/28/08	Produce Eastern White Pine lumber and by-products.
Mason Box Company	521 Mt. Hope Street, North Attleboro, MA 02760.	3/27/08	Manufactures custom and stock gift greeting card boxes, jewelry boxes, candy boxes, security mail boxes and medical lab boxes.
Brown Street Furniture, LLC	P.O. Box 278, 87 Brown Street	4/1/08	Produces case goods from a variety of hardwoods—cherry, maple, ash, and pine.
Neu Dynamics Corporation	110 Steamwhistle Drive. Ivyland, PA 18974.	3/25/08	Manufactures precision molds and dies.
Hilltop Precision Machining, Inc	527 Gitts Run Road, Hanover, PA 17331.	3/7/08	Services provide tooling, fixtures, and wear parts of several markets which include automotive.
DaveCo Industries, Inc	3903 Cavalier Drive. Garland, TX 75042.	1/15/08	Sheet metal fabricating and assembling prototype machines.
A&W Products, Co., Inc	14 Garner Street, Port Jervis, NY 12771.	3/28/08	Manufacturer of wood (masonite) clipboards.
Country Candle Co., Inc	22 West Street, Millbury, MA 01527.	3/31/08	Manufactures candles and scented candles.
Precision Manufacturing Technologies, Inc.	364 Bonny Street, Grand Junction, CO 81501.	3/6/08	Process metal by using a range of tooling procedures, may be plated if necessary.
Burke E. Porter Machinery Company.	730 Plymouth NE., Grand Rapids, MI 49505.	3/16/08	Measuring and checking instruments for automotive assembly line testing.
Accent Displays, Inc	2560 Madison Avenue, Baltimore, MD 21632.	4/1/08	Produce display tradeshows and provide creative design fabrication and installation. For various industries' exhibits.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 2, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–7456 Filed 4–8–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1554

Grant of Authority for Subzone Status, MPM Silicones, LLC (Silicone–Based Products and Intermediaries), Waterford, New York

Pursuant to its authority under the Foreign–Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Capital District Regional Planning Commission, grantee of Foreign–Trade Zone 121, has made application to the Board for authority to establish a special–purpose subzone at the silicone–based products and intermediaries manufacturing and warehousing facility of MPM Silicones, LLC located in Waterford, New York (FTZ Docket 4–2007, filed 2–2–07);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 6518, 2/12/07; 72 FR 16764, 4–5–07; 72 FR 24272, 5–2–07; 72 FR 53989, 9–21–07) and a public hearing was held on 4–18–07; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if subject to the restrictions and limitations listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to silicone–based products and intermediaries manufacturing at the facility of MPM Silicones, LLC, located in Waterford, New York (Subzone 121C), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the following restrictions and limitations:

1. Silicon metal subject to an antidumping or countervailing duty order that is admitted into the subzone in foreign status must ultimately be re–exported (regardless of whether it has been manufactured into a downstream product).

2. Admission of foreign–status silicon metal subject to an antidumping or countervailing duty order is limited to 10,000 metric tons per year.

3. Approval is for an initial period of five-years, subject to extension upon review.

Signed at Washington, DC, this 28th day of March 2008.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–7473 Filed 4–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–873 ; A–791–815

Ferrovanadium from the People(s Republic of China and the Republic of South Africa: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On December 3, 2007, the Department of Commerce (''Department'') initiated sunset reviews of the antidumping duty orders on ferrovanadium from the People(s Republic of China (''PRC'') and the Republic of South Africa (''South Africa''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 72 FR 67890 (December 3, 2007) (''Sunset Initiations''); *see also Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovanadium From the People(s Republic of China*, 68 FR 4168 (January 28, 2003) (''PRC Order''); *Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa*, 68 FR 4169 (January 28, 2003) (''South Africa Order''). Based on the notices of intent to participate and adequate responses filed by the domestic interested parties, and the lack of response from any respondent interested party, the Department conducted expedited sunset reviews of the PRC Order and South Africa Order pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of either the PRC Order or the South Africa Order would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice, *infra*.

EFFECTIVE DATE: April 9, 2008.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–1904.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2007, the Department initiated sunset reviews of the PRC Order and South Africa Order on ferrovanadium pursuant to section 751(c) of the Act. *See* Sunset Initiations. On December 18, 2007, the Department received timely notices of intent to participate in both sunset reviews (as joint submissions) from the Vanadium Producers and Reclaimers Association (''VPRA''), and its members Gulf Chemical & Metallurgical Corporation (''Gulf''), Gulf(s wholly owned subsidiary Bear Metallurgical Company (''Bear Metallurgical''), Metallurg Vanadium Corporation (''MVC''), and Strategic Minerals Corporation (on behalf of its wholly owned subsidiary, Stratcor, Inc.) (''Stratcor'') (collectively ''Domestic Producers''), pursuant to 19 C.F.R. 351.218(d)(1)(i). In accordance with 19 C.F.R. 351.218(d)(1)(ii)(A), VPRA claimed interested party status under section 771(9)(E) of the Act as a trade or business association, a majority of whose members produce or wholesale a domestic like product in the United States. Gulf, Bear Metallurgical, MVC, and Stratcor claimed interested party status under section 771(9)(C) of the Act as domestic producers and/or wholesalers of subject merchandise.

On January 2, 2008, Domestic Producers jointly filed substantive responses in both sunset reviews, within the 30-day deadline as specified in 19 C.F.R. 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in either sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of the PRC Order and the South Africa Order.

SCOPE OF THE ORDERS

The scope of the orders covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. The scope specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium–aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium–bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and customs purposes, the Department(s written description of the scope of these orders remains dispositive.

ANALYSIS OF COMMENTS RECEIVED

A complete discussion of all issues raised in these sunset reviews is addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. *See* ''Issues and Decision Memorandum for the Final Results in the Expedited Sunset Reviews of the Antidumping Duty Orders on Ferrovanadium from the People(s Republic of China and from the Republic of South Africa,'' from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary for Import Administration, dated April 1, 2008 (''I&D Memo''). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if either the PRC Order or the South Africa Order were revoked. Parties can obtain a public copy of the I&D Memo on file in the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete public version of the I&D Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the I&D Memo are identical in content.

FINAL RESULTS OF SUNSET REVIEWS

The Department determines that revocation of the PRC Order on ferrovanadium would likely lead to continuation or recurrence of dumping at the rates listed below:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Pangang Group International Economic & Trading Corporation ..	12.97%
PRC–Wide Entity	66.71%

The Department determines that revocation of the South Africa Order on ferrovanadium would likely lead to

continuation or recurrence of dumping at the rates listed below:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Highveld Steel and Vanadium Corporation, Ltd.	116.00%
Xstrata South Africa (Proprietary) Limited	116.00%
All Others	116.00%

NOTIFICATION REGARDING ADMINISTRATIVE PROTECTIVE ORDER

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–7465 Filed 4–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–475–703

Granular Polytetrafluoroethylene Resin From Italy: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: April 9, 2008.

FOR FURTHER INFORMATION CONTACT: Alicia Winston or Salim Bhabhrawala, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1785 or (202) 482–1784, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On September 25, 2007, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy, covering the period August 1, 2006, through July 31, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 54428 (September 25, 2007). The preliminary results for this administrative review are currently due no later than May 2, 2008.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review and analyze the sales and cost information submitted by the respondent in this administrative review because this review involves complex sales and cost accounting issues. Thus, it is not practicable to complete this review within the original time limit (*i.e.*, May 2, 2008). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to August 30, 2008, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. However, August 30, 2008, falls on a Saturday and September 1, 2008, is a holiday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results is now no later than September 2, 2008.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 3, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7469 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Proposed Revision to Guidelines for Coastal and Estuarine Land Conservation Program

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Request for comments for proposed revision to program guidelines.

SUMMARY: Notice is hereby given that NOAA is planning to update and revise its Guidelines for the Coastal and Estuarine Land Conservation Program (CELCP) after five years implementing the program under these guidelines. This notice invites interested parties to provide comments or suggestions to NOAA for consideration in updating the CELCP guidelines.

DATES: Comments on the CELCP guidelines are requested by June 9, 2008, 2008 for consideration.

ADDRESSES: Please address comments to Roxanne Thomas, by mail at: Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Hwy., N/ORM7, Silver Spring, MD 20910; or by e-mail to *Roxanne.Thornas@noaa.gov*, Subject: CELCP Guidelines.

FOR FURTHER INFORMATION CONTACT: Roxanne Thomas or Elaine Vaudreuil, NOAA's Ocean Service, Office of Ocean and Coastal Resource Management at *Roxanne.Thomas@noaa.gov*, 301–713–3155 ext. 119 or *Elaine.Vaudreui1@noaa.gov,* 301–713–3155 ext. 103.

SUPPLEMENTARY INFORMATION: Background: The CELCP was established in 2002 to fund acquisition of land to protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses. Priority is given to lands that can be effectively managed and protected

and that have significant ecological value. Conservation projects should advance the goals, objectives or implementation of federal, regional, state or local coastal management plans.

The CELCP was created by Public Law 107–77 and codified at 16 U.S.C. 1456d. NOAA issued final guidelines for the program in June 2003. Since the program's creation, CELCP has administered more than 150 grants for land conservation projects in 26 out of 34 eligible coastal states and territories and has run two national funding competitions under the guidelines.

Based on its experience implementing this program, NOAA plans to update the CELCP program guidelines to clarify certain provisions and consider other changes. The revisions will not change the CELCP process, but will clarify certain provisions and consider other improvements. The current Final Guidelines for the CELCP can be found on the Internet at *http://www.coastalmanagement.noaa.gov/land/media/CELCPfinalo2Guidelines.pdf* or can be requested either by phone at 301–713–3155 ext. 119, or by e-mail to *Roxanne.Thomas@noaa.gov.* Any proposed changes to the CELCP guidelines would be published in the **Federal Register**, with an opportunity for public comment, following compliance with any relevant statutes and executive orders.

Dated: April 2, 2008.

John H. Dunnigan,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. E8–7399 Filed 4–8–08; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH01

Marine Mammals; File No. 10014–01

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that the New Jersey Department of Environmental Protection (NJDEP), Division of Science, Research and Technology, P.O. Box 409, Trenton, NJ 08625–0409, has applied in due form for an amendment to their Permit No. 10014 to allow them to take additional marine mammals during surveys for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 9, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10014–01.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The NJDEP seeks permission to increase the number of marine mammals taken during research conducted to elucidate the distribution and abundance of baleen whales, odontocete whales, pinnipeds, and sea turtles. Research would include take by survey approach during shipboard and aircraft transect surveys. Researchers request authorization to take up to 2,500 common dolphins (*Delphinus delphis*), 3,200 bottlenose dolphins (*Tursiops truncatus*), and 1,280 harbor porpoises (*Phocoena phocoena*) annually. The study area would continue to include U.S. waters offshore of southern New Jersey out to a distance of 20 nautical miles.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed will require a supplemental environmental assessment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 3, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–7480 Filed 4–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearings for the Naval Surface Warfare Center Panama City Division (NSWC PCD) Mission Activities Draft Environmental Impact Statement/Overseas Environmental Impact Statement

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and Presidential Executive Order 12114, the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) on March 27, 2008, to evaluate the potential environmental effects associated with the Naval Surface Warfare Center, Panama City Division (NSWC PCD) mission activities within the NSWC PCD Study Area, which includes St. Andrew Bay (SAB), and military warning areas W–151 (includes Panama City Operating Area), W–155 (includes Pensacola Operating Area), and W–470.

The Proposed Action is to improve NSWC PCD's capabilities to conduct new and increased mission operations for the Department of Defense (DoD) and its customers within the NSWC PCD Study Area. The research, development, test, and evaluation (RDT&E) activities occurring in these areas include air

operations, surface operations, subsurface operations, sonar operations, electromagnetic operations, laser operations, ordnance operations, and projectile firing. A Notice of Intent for this Draft EIS/OEIS was published in the **Federal Register** on August 19, 2004 (69 FR 51453).

The Navy will conduct three public hearings to receive oral and written comments on the Draft EIS/OEIS. Federal agencies, state agencies, and local agencies and interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings for this Draft EIS/OEIS.

Dates and Addresses: An open house session will precede the scheduled public hearing at each of the locations listed below and will allow individuals to review the information presented in the Draft EIS/OEIS. Navy representatives will be available during the open house sessions to clarify information related to the Draft EIS/OEIS.

In addition, the National Marine Fisheries Service (NMFS), which is participating as a cooperating agency in the development of the EIS, will be represented at the open houses and public hearings. All meetings will start with an open house from 6 p.m. to 7 p.m. Presentations and public comment will be held from 7 p.m. to 9 p.m. Public hearings will be held on the following dates and at the following locations:

1. May 5, 2008, Gulf Coast Community College, Student Union Conference Center, 5230 West Hwy 98, Panama City, Florida,
2. May 6, 2008, Pensacola Junior College—Warrington Campus, McMillian Auditorium, 5555 Highway 98 West, Pensacola, Florida,
3. May 7, 2008, Port St. Joe Elementary School Auditorium, 2201 Long Avenue, Port St. Joe, Florida.

FOR FURTHER INFORMATION CONTACT: Mrs. Carmen Ferrer, Naval Surface Warfare Center Panama City Division, 110 Vernon Avenue, Panama City, Florida 32407; telephone: 850–234–4146; E-mail *carmen.ferrer@navy.mil.*

SUPPLEMENTARY INFORMATION: NSWC PCD is the United States (U.S.) Navy's premier research and development organization focused on littoral (coastal region) warfare and expeditionary (designed for military operations abroad) warfare. NSWC PCD provides in-water research, development, test, and evaluation (RDT&E) in support of expeditionary maneuver warfare, operations in extreme environments, mine warfare, maritime operations, and coastal operations.

NSWC PCD is the nation's principal repository of this expertise supported by a diverse technical workforce in these areas that are critical to the future of U.S. Navy and U.S. Marine Corps operations. In accordance with Department of Defense (DoD) Directive 5000.1, test and evaluation support is to be integrated throughout the defense acquisition process (the process that encompasses every aspect of identifying, developing, and procuring defense systems) and is structured to provide essential information to decision makers. Such testing is used to validate the technical performance parameters (whether a given system performs as expected) and to determine whether systems are operationally effective, suitable, survivable, and safe for their intended use.

It is the mission of NSWC PCD to provide RDT&E, as well as in-service support for amphibious warfare, diving, maritime special operations, mine warfare (mines and mine countermeasures), and other naval missions that take place in the coastal region. The infrastructure has been established at NSWC PCD to support this mission. A unique feature of NSWC PCD that is unduplicated in the U.S. is the natural operating environment provided by the ready access to the Gulf of Mexico (GOM) and its associated littoral and coastal regions. The GOM provides a surrogate environment for most of the littoral areas of the world in which the Navy will find itself operating for the foreseeable future.

The NSWC PCD Draft EIS/OEIS addresses all of the identified RDT&E operations that occur within the NSWC PCD Study Area. The NSWC PCD RDT&E activities may be conducted anywhere within the existing military operating areas and St. Andrews Bay from the mean high water line (average high tide mark) out to 222 kilometer (120 nautical miles) offshore.

The Draft EIS/OEIS evaluates the potential environmental impacts of three alternatives, including two action alternatives (Alternatives 1 and 2) and the No Action Alternative. The No Action Alternative addresses historical and current mission activities (referred to cumulatively as ''baseline mission activities'') for the NSWC PCD Study Area. Alternatives 1 and 2 analyze baseline activities, as well as future growth requirements for missions and activity levels. The development process incorporated the need to support future test capabilities, expand required mission capabilities, and increase the baseline tempo and intensity of activities. Alternative 2 is the Navy's preferred alternative.

No significant adverse impacts are identified for any resource area in any geographic location within the NSWC PCD Study Area that cannot be mitigated, with the exception of exposure of marine mammals and sea turtles to underwater sound. The Navy will apply to NMFS for a Marine Mammal Protection Act Letter of Authorization (LOA) and governing regulations to authorize incidental takes of marine mammals that may result from the implementation of the activities analyzed in the Draft EIS/OEIS. NMFS is participating as a cooperating agency in the development of this Draft EIS/OEIS. NMFS staff will be present at the scheduled open houses and public hearings and available to discuss both the MMPA incidental take authorization process and NMFS's participation in the development of the EIS/OEIS.

The Draft EIS/OEIS is being mailed to Federal, State, and local agencies, elected officials, and other interested individuals and organizations. The public comment period will end May 19, 2008.

Copies of the Draft EIS/OEIS are available for public review at the following libraries: Bay County Public Library, 25 West Government Street, Panama City, FL 32401; Gulf County Public Library, 110 Library Drive, Port St. Joe, FL 32456; Fort Walton Beach Public Library, 185 Miracle Strip Pkwy SE, Fort Walton Beach, FL 32548; and Pensacola Public Library, 200 West Gregory Street Pensacola, FL 32501.

The Draft EIS/OEIS is also available for electronic public viewing at *http://nswcpc.navsea.navy.mil/Environment.htm.* A paper copy of the Executive Summary or a single CD of the Draft EIS/OEIS will be made available upon request by contacting Mrs. Carmen Ferrer, Naval Surface Warfare Center Panama City Division, 110 Vernon Avenue, Panama City, Florida 32407; E-mail: *carmen.ferrer@navy.mil.*

Federal, State, and local agencies and interested parties are invited to be present or represented at the public hearing. Written comments can also be submitted during the open house sessions preceding the public hearings. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS/OEIS and will be responded to in the Final EIS/OEIS. Equal weight will be given to both oral and written statements.

In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a long statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing at the hearing, mailed to Mrs. Carmen Ferrer, Naval Surface Warfare Center Panama City Division, 110 Vernon Avenue, Panama City, Florida 32407 or submitted via e-mail to *nswcpcpaowebmanager@navy.mil.*

All written comments must be postmarked or received by May 19, 2008, to ensure they become part of the official record. All comments will be responded to in the Final EIS/OEIS.

Dated: April 3, 2008.

T. M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–7461 Filed 4–8–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Terminate the Draft Supplemental Environmental Impact Statement for the Introduction of F/A–18E/F (Super Hornet) Aircraft to the East Coast of the United States (Construction and Operation of an Outlying Landing Field); To Prepare an Environmental Impact Statement for Construction and Operation of an Outlying Landing Field To Support Carrier Air Wing Aircraft at Naval Air Station Oceana and Naval Station Norfolk, VA; and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In a Notice of Intent published on June 24, 2005 (70 **Federal Register** [FR] 36566), the Department of the Navy announced its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to provide additional analysis of the environmental consequences associated with the construction and operation of an Outlying Landing Field (OLF) needed to support operations of Super Hornet squadrons stationed at Naval Air Station (NAS) Oceana, Virginia, and Marine Corps Air Station (MCAS) Cherry Point, North Carolina. The U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft SEIS on February 23, 2007 (72 FR 8155). Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the regulations implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Navy announces its intent to terminate the Draft SEIS for the Introduction of F/A–18E/F (Super Hornet) Aircraft to the East Coast of the United States (Construction and Operation of an Outlying Landing Field) and prepare an EIS to evaluate potential environmental consequences of the construction and operation of an OLF at new alternative sites to support Field Carrier Landing Practice (FCLP) training requirements for carrier-based fixed-wing aircraft stationed at and transient to NAS Oceana and Naval Station (NS) Norfolk Chambers Field, Virginia. The five new alternative OLF sites identified to date are: (1) Cabin Point Site, located in Surry, Prince George, and Sussex counties, Virginia; (2) Dory Site, located in Southampton and Sussex counties, Virginia; (3) Mason Site, located in Sussex and Southampton counties, Virginia; (4) Sandbanks Site, located in Gates and Hertford counties, North Carolina; and (5) Hale's Lake Site, located in Camden and Currituck counties, North Carolina. These five site alternatives were identified by applying operational, environmental and population criteria to a list of 13 new sites provided by the State of North Carolina and the Commonwealth of Virginia, as well as on the five sites examined in the Draft SEIS.

Dates and Addresses: The Navy is initiating a scoping process to identify community concerns and local issues that will be addressed in the EIS. Federal, state, and local elected officials and agencies and interested persons are encouraged to provide comments to the Navy to identify environmental concerns that should be addressed in the EIS. To be most helpful, scoping comments should clearly describe the specific issues or topics the EIS should address.

Public scoping meetings, using an Open House format, will be held to receive written comments or concerns that should be addressed in the EIS. Public scoping meetings will be as follows:

1. Currituck County, North Carolina. North Carolina Cooperative Extension, Currituck County Center, 120 Community Way, Barco, NC 27917 on April 28, 2008, 4 p.m. to 9 p.m.;
2. Prince George County, Virginia. J.E.J Moore Middle School, 11455 Prince George Drive, Disputanta, VA 23842 on April 29, 2008, 4 p.m. to 9 p.m.;
3. Sussex County, Virginia. Sussex Central High School, 21394 Sussex Drive, Sussex, VA 23884 on April 30, 2008, 4 p.m. to 9 p.m.;
4. Southampton County, Virginia. Southampton High School, 23350 Southampton Parkway, Courtland, VA 23837 on May 1, 2008, 4 p.m. to 9 p.m.;
5. Gates County, North Carolina. Gates County High School, 088 U.S. Highway 158 West, Gatesville, NC 27938 on May 2, 2008, 4 p.m. to 9 p.m.;
6. Camden County, North Carolina. Camden County High School, 103 U.S. Highway 158 West, Camden, NC 27921 on May 5, 2008, 4 p.m. to 9 p.m.; and
7. Surry County, Virginia. Surry Central High School, 1675 Hollybush Road, Dendron, VA 23839 on May 7, 2008, 4 p.m. to 9 p.m.

The dates, times, and locations of public scoping meetings are also available at (*http://www.olfeis.com*), and will be provided to local and regional media serving localities in the vicinity of proposed OLF sites.

Comments can be made in the following ways: (1) Written statements submitted to Navy representatives at the public scoping open houses; (2) written statements mailed to Commander, Naval Facilities Engineering Command Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508, Attn: Code EV OLF Project Manager; and (3) written statements submitted via the Web site at *http://www.OLFEIS.com.* All written comments must be postmarked by June 7, 2008.

SUPPLEMENTARY INFORMATION: The Navy proposes to construct an OLF that will support the FCLP operations of carrier-based fixed-wing aircraft squadrons stationed at and transient to NAS Oceana, Virginia Beach, Virginia (F/A–18C Hornet and F/A–18E/F Super Hornet squadrons and Fleet Replacement Squadrons (FRS)), and NS Norfolk Chambers Field, Norfolk, Virginia (E–2C Hawkeye, C–2A Greyhound, and E–2C/C–2A FRS). While NALF Fentress will continue providing necessary support for FCLP and other training requirements, this landing field alone cannot fully support training requirements of home-based and transient aircraft from NAS Oceana and NS Norfolk Chambers Field. Training requirements for aircraft based at these airfields can exceed NALF Fentress capacity up to 63% of the time during summertime when hours of darkness are limited. Capacity problems are further exacerbated when operational demands require surging additional carrier strike groups. A new OLF is required to provide year-round capacity to support FCLP training requirements under the Fleet Response Plan, provide operational flexibility needed to respond to emergent national defense requirements, and FCLP

training consistent with at-sea operating conditions.

Facilities at the OLF would include an 8,000-foot runway, aircraft traffic control tower, and other support buildings. The Navy also proposes to establish Class D airspace around the OLF. Property and property interests for construction of the facilities, airfield safety zones, and projected high-noise zones would need to be acquired through purchase, lease, or acquisition of restrictive use or conservation easements.

The EIS will address environmental consequences associated with construction of the airfield, associated infrastructure and support facilities, and aircraft operations. In addition, the EIS will assess socioeconomic consequences associated with acquisition of property and property interests for the OLF and any relocation of residences within the proposed airfield safety and projected high-noise zones.

The Navy has worked with the leadership in the State of North Carolina and Commonwealth of Virginia to identify a range of reasonable site location alternatives for the OLF. For purposes of analysis, an estimated 25,000 to 30,000-acre area is being considered for each site location alternative. Additional alternative site locations may be identified during the scoping process. The five site location alternatives identified to date are: (1) Cabin Point Site, located in Surry, Prince George, and Sussex counties, Virginia; (2) Dory Site, located in Southampton and Sussex counties, Virginia; (3) Mason Site, located in Sussex and Southampton counties, Virginia; (4) Sandbanks Site, located in Gates and Hertford counties, North Carolina; and (5) Hale's Lake Site, located in Camden and Currituck counties, North Carolina.

The Navy has and will continue to work with the leadership from the State of North Carolina and the Commonwealth of Virginia as well as local communities to explore all possible economic benefits to the community to offset the potential impacts from the OLF. During the scoping process, the Navy will encourage and solicit input on other potential economic benefit proposals.

The Navy intends to analyze potential environmental consequences of the construction and operation of the OLF on the natural environment, including, but not limited to, air quality, plant and animal habitats, and water resources such as streams and wetlands. It will also evaluate potential consequences to the built environment, including land use patterns, transportation, housing, and regional economy. Further, the Navy will prepare analyses of projected operations on existing airspace and of aircraft noise exposure levels on the ambient noise environment.

FOR FURTHER INFORMATION CONTACT: Commander, Naval Facilities Engineering Command Atlantic, 6506 Hampton Boulevard, Norfolk, VA 23508, Attn: Code EV OLF Project Manager.

Dated: April 4, 2008.

T. M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–7463 Filed 4–8–08; 8:45 am]

BILLING CODE 3810–FF–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 May 9, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 3, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Independent Living Services for Older Individuals Who are Blind.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 448.

Abstract: This data collection instrument is being submitted to obtain approval for information collection on the Independent Living Services for Older Individuals Who Are Blind program. The data to be collected will include information related to staff, consumer demographics, cost of services, and services provided. This data will be used to evaluate and construct a profile for the program nationwide. The respondents will be the managers of the Independent Living Services for Older Individuals Who Are Blind program in each of the 50 states and territories.

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 3560. 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. E8–7454 Filed 4–8–08; 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 May 9, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by email to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 3, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Annual Student Activities Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 190.

Burden Hours: 570.

Abstract: This information collection provides the U.S. Department of Education with information needed to determine if fellows have made substantial progress toward meeting the program's objectives and allows program staff to monitor and evaluate time-to-degree completion and the graduation rate. The Congress has mandated (through the Government Performance and Results Act of 1993) that the U.S. Department of Education provide documentation about the progress being made by the program. Program staff have made minor adjustments to the report to improve the clarity of the document, and to ensure more effective data collection and evaluation of program performance. However, the current burden estimate of three hours per response remains the same, pending feedback from respondents after the approved Annual Student Activities Report is extended and implemented.

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 3571. 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. E8–7455 Filed 4–8–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Publication of Proposed Compilation of Privacy Act System of Records; Correction

AGENCY: Department of Energy.

ACTION: Notice; correction.

SUMMARY: The Department of Energy published a notice in the **Federal Register** on April 2, 2008 of the proposed compilation of the Privacy Act System of Records. This notice corrects the date for responding to comments and the effective date.

FOR FURTHER INFORMATION CONTACT: Verlette L. Gatlin, (202) 586–5955.

Correction

In the **Federal Register** of April 2, 2008, FR Doc. E8–6239, on page 18044, the following correction is made to the **DATES** section:

DATES: Any interested person may submit written comments concerning the proposed changes to DOE's Privacy Act Systems of Records by May 9, 2008. Except for proposed exemptions that may require separate notice and comment rulemaking, the changes proposed in this notice will be effective May 9, 2008 unless DOE receives comments that require a contrary determination. DOE will publish a document in the **Federal Register** notifying the public if any changes are necessary.

Issued in Washington, DC on April 3, 2008.

Ingrid Kolb,

Director, Office of Management.

[FR Doc. E8–7441 Filed 4–8–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Ultra-Deepwater Advisory Committee: Solicitation of Nominations for Appointment as a Member to the Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) Office of Fossil Energy is soliciting nominations for candidates to serve as members of the Ultra-Deepwater Advisory Committee. The Advisory Committee advises the Secretary of Energy on the development and implementation of programs under Subtitle J, Section 999 of the Energy Policy Act of 2005 (EPACT) related to ultra-deepwater natural gas and other petroleum resources, and reviews and provides written comments on the annual plan as also described in this subtitle of the EPACT. The membership of the Advisory Committee must be in accordance with the provisions of the Federal Advisory Committee Act and some members of the Advisory Committee may be appointed as special Government employees of the Department of Energy.

DATES: Nominations must be received by May 2, 2008.

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations please contact Ms. Elena Melchert, Mr. Bill Hochheiser, or Mr. James Slutz, Designated Federal Official (DFO), Ultra-Deepwater Advisory Committee, at *ultradeepwater@hq.doe.gov* or (202) 586–5600. Complete text of Subtitle J, Section 999 of the Energy Policy Act of 2005 can be found on the DOE Office of Fossil Energy Web site at *http://www.fe.doe.gov/programs/oilgas/advisory committees/UltraDeepwater.html.*

SUPPLEMENTARY INFORMATION:

Background: Under Subtitle J, Section 999, the Secretary of Energy is required to carry out a program of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon). The activities should maximize the value of natural gas and other petroleum resources of the United States by increasing the supply of such resources through reducing the cost and increasing the efficiency of exploration for and production of such resources while improving safety and minimizing environmental impacts. In support of this subtitle, the Secretary will contract with a corporation that is structured as a program consortium [REF: Energy Policy Act of 2005, Pub. L. 109–58, Section 999B, 119 Stat. 917–921] to administer the activities outlined above.

The program includes improving safety and minimizing environmental impacts of activities involving ultra-deepwater architecture and technology, including drilling to formations in the Outer Continental Shelf to depths greater than 15,000 feet. Projects focus on the development and demonstration of individual exploration and production technologies as well as integrated systems technologies including new architectures for production in ultra-deepwater (water depths greater than or equal to 1500 meters). The Secretary is also required to prepare an annual plan that describes the ongoing and prospective activities of the program.

In May 2006, the Secretary established the Ultra-Deepwater Advisory Committee to advise the Department on the development and implementation of programs related to ultra-deepwater natural gas and other petroleum resources, and to review and comment on the annual plan. Re-chartering of this committee is currently underway.

Qualifications for membership of this committee include: (A) Individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production; (B) individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations; (C) no individuals who are Federal employees; and (D) no individuals who are board members, officers, or employees of the program consortium [REF: Energy Policy Act of 2005, Pub. L. 109–58, Section 999D(a)(2), 119 Stat. 922].

How to Apply: Candidates who wish to be considered for appointment to the Committee should provide the following information by May 2, 2008. The format to be used for nomination is a resume that addresses the specific qualification criteria stated in Section 999D(a)(2) of the EPACT and other information. Details and specifications for preparing the resume are summarized below and can be found at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html.*

Resume should address all the information requested below: Full name; Professional Title (if applicable); Employment Affiliation; Address; Phone; E-mail; Professional experience related to ultra-deepwater natural gas and other petroleum resources; Education; Professional Affiliations and Awards; Professional Discipline(s); Affiliation with or nomination by industry or professional associations or other stakeholder groups; Fit with one or more membership categories specified by Section 999D(a)(2) of the Energy Policy Act of 2005: (A) ''* * * individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production;'' (B) ''* * * individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;'' Availability for the planned meeting dates of September 9 or 10, 2008 and October 14 or 15, 2008; Relationship to the Program Consortium (Note that board members, officers, and employees of the consortium are not eligible for appointment to this Committee.). [REF: Energy Policy Act of 2005, Subtitle J, Section 999D(a)(2)]

In accordance with the Federal Advisory Committee Act [REF: 5 U.S.C. App. 2], this committee's membership will be balanced in terms of the points of view represented. All resumes must be received by May 2, 2008. Candidates may use the form found at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html* to address the required resume elements. Candidates who wish to be considered for appointment to the Committee must submit a resume via one of the following methods:

1. E-mail to *UltraDeepwater@hq.doe.gov* (with resume embedded within the body of the e-mail message; no attachment).

2. Facsimile to 202/586–6221, Attn: UDAC Nomination.

3. Overnight delivery service to: U.S. Department of Energy, Mail Stop FE–30, 1000 Independence Avenue, SW., Washington, DC 20585. No resumes should be sent via the U.S. Postal Service due to extensive security processing that can damage documents and result in extensive delays.

4. Resume Submission Online at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html.*

For security reasons, no e-mail attachments are allowed, nor will they be opened if included. The closing date for receipt of resumes is May 2, 2008.

All resumes received will be acknowledged within 10 working days from date of receipt. Members will have their travel expenses reimbursed, but their time will not be compensated. Some members of the Advisory Committee may be appointed as special Government employees of the

Department of Energy. Questions regarding the nomination process should be directed to Bill Hochheiser or Elena Melchert at 202/586–5600.

Issued in Washington, DC on April 4, 2008.

Rachel Samuel,

Deputy Committee, Management Officer.

[FR Doc. E8–7491 Filed 4–8–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Unconventional Resources Technology Advisory Committee: Solicitation of Nominations for Appointment as a Member to the Unconventional Resources Technology Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) Office of Fossil Energy is soliciting nominations for candidates to serve as members of the Unconventional Resources Technology Advisory Committee. The Advisory Committee advises the Secretary of Energy on the development and implementation of programs under Subtitle J, Section 999 of the Energy Policy Act of 2005 (EPACT) related to onshore unconventional natural gas and other petroleum resources, and reviews and provides written comments on the annual plan as also described in this subtitle of the EPACT. The membership of the Advisory Committee must be in accordance with the provisions of the Federal Advisory Committee Act and some members of the Advisory Committee may be appointed as special Government employees of the Department of Energy.

DATES: Nominations must be received by May 2, 2008.

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations please contact Ms. Elena Melchert, Mr. Bill Hochheiser, or Mr. James Slutz, Designated Federal Official (DFO), Unconventional Resources Technology Advisory Committee, at *UnconventionalResources@hq.doe.gov* or (202) 586–5600. Complete text of Subtitle J, Section 999 of the Energy Policy Act of 2005 can be found on the DOE Office of Fossil Energy Web site at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UnconventionalResources.html.*

SUPPLEMENTARY INFORMATION:

Background: Under Subtitle J, Section 999, the Secretary of Energy is required to carry out a program of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon). The activities should maximize the value of natural gas and other petroleum resources of the United States by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts. In support of this subtitle, the Secretary will contract with a corporation that is structured as a program consortium [REF: Energy Policy Act of 2005, Pub. L. 109–58, Section 999B, 119 Stat. 917–921] to administer the activities outlined above.

The program includes improving safety and minimizing environmental impacts of activities onshore unconventional natural gas and other petroleum resource exploration and production technology. Projects focus on areas including advanced coalbed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, stranded gas, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production. The Secretary is also required to prepare an annual plan that describes the ongoing and prospective activities of the program.

In May 2006, the Secretary established the Unconventional Resources Technology Advisory Committee to advise the Department on the development and implementation of programs related to unconventional natural gas and other petroleum resources, and to review and comment on the annual plan. The process of re-chartering this committee is currently underway.

Qualifications for membership of this committee include: (A) Employees or representatives of independent producers of natural gas and other petroleum, including small producers; (B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production; (C) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations; (D) individuals with expertise in the various geographic areas of potential supply of unconventional onshore natural gas and other petroleum in the United States; (E) no individuals who are Federal employees; and (F) no individuals who are board members, officers, or employees of the program consortium [REF: Energy Policy Act of 2005, Pub. L. 109–58, Section 999D(b)(2), 119 Stat. 922–923].

How to Apply: Candidates who wish to be considered for appointment to the Committee should provide the following information by May 2, 2008. The format to be used for nomination is a resume that addresses the specific qualification criteria stated in Section 999D(b)(2) of the EPACT and other information. Details and specifications for preparing the resume are summarized below and can be found at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UnconventionalResources.html.*

Resume should address all the information requested below: Full name; Professional Title (if applicable); Employment Affiliation; Address; Phone; E-mail; Professional experience related to ultra-deepwater natural gas and other petroleum resources; Education; Professional Affiliations and Awards; Professional Discipline(s); Affiliation with or nomination by industry or professional associations or other stakeholder groups; Fit with one or more membership categories specified by Section 999D(b)(2) of the Energy Policy Act of 2005: (A) A majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers; (B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production; (C) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations; (D) individuals with expertise in the various geographic areas of potential supply of unconventional onshore natural gas and other petroleum in the United States; Availability for the planned meeting dates of September 9 or 10, 2008 and October 14 or 15, 2008; Relationship to the Program Consortium (Note that board members, officers, and employees of the consortium are not eligible for appointment to this Committee.). [REF: Energy Policy Act of 2005, Subtitle J, Section 999D(b)(2)]

In accordance with the Federal Advisory Committee Act [REF: 5 U.S.C. App. 2], this committee's membership will be balanced in terms of the points of view represented. All resumes must be received by May 2, 2008. Candidates may use the form found at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UnconventionalResources.html* to address the required resume elements. Candidates who wish to be considered for appointment to the Committee must submit a resume via one of the following methods.

1. E-mail to *UnconventionalResources@hq.doe.gov* (with resume embedded within the body of the e-mail message; no attachment.),

2. Facsimile to 202/586–6221, Attn: URTAC Nomination.

3. Overnight delivery service to: U.S. Department of Energy, Mail Stop FE–30, 1000 Independence Avenue, SW., Washington, DC 20585. No resumes should be sent via the U.S. Postal Service due to extensive security processing that can damage documents and result in extensive delays.

4. Resume Submission Online at *http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UnconventionalResources.html.*

For security reasons, no e-mail attachments are allowed, nor will they be opened if included. The closing date for receipt of resumes is May 2, 2008. All resumes received will be acknowledged within 10 working days from date of receipt. Members will have their travel expenses reimbursed, but their time will not be compensated. Some members of the Advisory Committee may be appointed as special Government employees of the Department of Energy. Questions regarding the nomination process should be directed to Bill Hochheiser or Elena Melchert at 202/586–5600.

Issued in Washington, DC on April 4, 2008.

Rachel Samuel,

Deputy Committee, Management Officer.

[FR Doc. E8–7495 Filed 4–8–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 02, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–61–000.
Applicants: Forward Energy LLC, EFS Forward, LLC.
Description: Forward Energy LLC *et al.* submits an application for authorization for a transaction that would result in a change in the ownership.
Filed Date: 03/27/2008.
Accession Number: 20080331–0031.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: EC08–62–000.
Applicants: OAO Severstal, ISG Acquisition, Inc., ISG Sparrows Point, LLC.
Description: Application for Order Under Section 203 of the Federal Power Act and Request for Waivers, Expedited Action, and Confidential Treatment.
Filed Date: 03/31/2008.
Accession Number: 20080331–5024.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: EC08–63–000.
Applicants: Granite Ridge Energy, LLC, Merrill Lynch Credit Products, LLC.
Description: Granite Ridge Energy LLC *et al.* submits an Application for FERC to approve the proposed transfer of equity interests in Granite Ridge.
Filed Date: 03/28/2008.
Accession Number: 20080401–0085.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: EC08–65–000.
Applicants: Southaven Power, LLC.
Description: Application for authorization for disposition of jurisdictional facilities and request for expedited action re: Southaven Power LLC.
Filed Date: 03/28/2008.
Accession Number: 20080401–0081.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: EC08–66–000.
Applicants: JPMorgan Chase & Co., Bear Stearns Companies Inc., and its Public Utility Subsidiaries.
Description: Application of JPMorgan Chase & Co & The Bears Stearns Companies Inc for authorization of certain securities and the merger of facilities subject to the jurisdiction of the Commission.
Filed Date: 03/31/2008.
Accession Number: 20080402–0066.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–52–000.
Applicants: North Allegheny Wind, LLC.
Description: Self Certification Notice of Exempt Wholesale Generator Status for North Allegheny Wind, LLC.
Filed Date: 03/31/2008.
Accession Number: 20080331–5126.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: EG08–53–000.
Applicants: Wessington Wind I, LLC.
Description: Self Certification Notice of Wessington Wind I, LLC.
Filed Date: 04/01/2008.
Accession Number: 20080401–5218.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–569–039; ER02–862–010; ER01–666–010; ER91–569–040; ER01–1804–008.
Applicants: Entergy Services, Inc.; Entergy Power Ventures, L.P.; EWO Marketing, LP; Entergy Power, Inc.; Warren Power, LLC.
Description: Entergy Services Inc *et al.* submits revised market-based rate tariffs reflecting the new tariff requirements established in Order 697.
Filed Date: 03/31/2008.
Accession Number: 20080401–0074.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER02–298–004; ER08–584–001.
Applicants: Thompson River Co-Gen, LLC.
Description: Thompson River Power, LLC submits a notice of succession and a notice of change in status informing the Commission that it has succeeded to the market-based rate tariff of Thompson River Co-Gen, LLC.
Filed Date: 03/28/2008.
Accession Number: 20080401–0057.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER05–1511–001.
Applicants: Noble Thumb Windpark I, LLC.
Description: Noble Thumb Windpark I, LLC notifies the Commission of a non-material change in status resulting from a change in the size of the 48 MW Wind-Power Generation Project under development.
Filed Date: 03/28/2008.
Accession Number: 20080331–0160.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER03–534–007.
Applicants: INGENCO Wholesale Power L.L.C.
Description: Notice of Non-Material Change in Status of INGENCO Wholesale Power L.L.C.
Filed Date: 04/01/2008.
Accession Number: 20080401–5096.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER07–1372–004.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits Substitute Second Revised Sheet 454.01 *et al.* to FERC Electric Tariff, Third Revised Volume 1, in compliance with FERC's 2/25/08 Order.
Filed Date: 03/27/2008.
Accession Number: 20080331–0063.
Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2008.

Docket Numbers: ER08–149–004.
Applicants: Northeast Utilities Service Company.
Description: Supplemental Information to NUSCO's Feb. 12, 2008, Compliance Filing.
Filed Date: 04/01/2008.
Accession Number: 20080401–5161.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–376–001; ER08–455–001; ER08–520–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits their compliance filing, pursuant to FERC's 3/25/08 Order.
Filed Date: 04/01/2008.
Accession Number: 20080402–0160.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 08, 2008.

Docket Numbers: ER08–379–002.
Applicants: Rensselaer Cogeneration LLC.
Description: Rensselaer Cogeneration LLC submits its amended proposed market based rate tariff entitled FERC Electric Tariff Revised, Volume 1.
Filed Date: 03/31/2008.
Accession Number: 20080401–0056.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–632–001.
Applicants: DC Energy Texas, LLC.
Description: DC Energy Texas, LLC submits an Amendment to the Petition for Market-Based Rate Application filed on 3/3/08.
Filed Date: 03/27/2008.
Accession Number: 20080328–0137.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: ER08–646–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company submits a Notice of Cancellation cancelling a Service Agreement for long-term firm transmission service dated 12/23/93 and a Service Agreement for long-term non-firm transmission service dated 8/22/94, etc.
Filed Date: 03/07/2008.
Accession Number: 20080310–0183.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 9, 2008.

Docket Numbers: ER08–651–002.
Applicants: Ameren Energy Marketing Company.
Description: Ameren Energy Marketing Company submits the revised final form Confirmation Agreement for the request for proposals for capacity for the planning year 6/1/08 through 5/31/09, etc.
Filed Date: 03/28/2008.
Accession Number: 20080331–0159.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–653–002.
Applicants: Union Electric Company.
Description: Union Electric Company submits the revised final form of the Confirmation Agreement for the request for proposals for capacity for the planning year 6/1/08 through 5/31/09, etc.
Filed Date: 03/28/2008.
Accession Number: 20080331–0158.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–669–001.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power System submits the corrected tariff sheets and cost support reflecting reductions to Texas Central Company annual transmission rate.
Filed Date: 03/28/2008.
Accession Number: 20080331–0156.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–719–001.
Applicants: Xcel Energy Operating Companies.
Description: Twin Cities Hydro LLC submits a Certificate of Concurrence for Northern States Power Company.
Filed Date: 03/28/2008.
Accession Number: 20080331–0157.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–729–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits a revised Network Integration Service Agreement for Network Integration Transmission Service with Piedmont Electric Membership Corporation.
Filed Date: 03/27/2008.
Accession Number: 20080328–0131.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: ER08–730–000.
Applicants: Duke Energy Carolinas, LLC.
Duke Energy Carolinas, LLC submits Third Revised Rate Schedule 316, the First Amended and Restated Full Requirements Power Purchase Agreement with Piedmont Electric Membership Corp.
Filed Date: 03/27/2008.
Accession Number: 20080328–0134.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: ER08–731–000.
Applicants: DC Energy California, LLC.
Description: DC Energy California, LLC submits the Application requests acceptance of FERC Electric Tariff, Original Volume 1 under which DCE California will engage in wholesale electric power and energy transactions as an electric power marketer etc.
Filed Date: 03/27/2008.
Accession Number: 20080328–0139.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: ER08–732–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits its Open Access Transmission Tariff, SPP is revising several provisions of its executed external market advisor services agreement with Boston Pacific Company, Inc.
Filed Date: 03/27/2008.
Accession Number: 20080328–0138.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: ER08–733–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits the Notice of Cancellation of PG&E Rate Schedule FERC 213, the interconnection Agreement between PG&E and Turlock Irrigation District.
Filed Date: 03/28/2008.
Accession Number: 20080328–0140.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–734–000.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits a Notice of Cancellation of Original Service Agreement 8 with the City of Evansville.
Filed Date: 03/28/2008.
Accession Number: 20080331–0054.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–735–000.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits a Notice of Cancellation of Original Service Agreement 6 with Wisconsin Public Power Inc.

Filed Date: 03/28/2008.
Accession Number: 20080331–0055.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–736–000.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits a Notice of Cancellation of Original Service Agreement 20 with Wisconsin Public Power Inc.
Filed Date: 03/28/2008.
Accession Number: 20080331–0057.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–737–000.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits a Notice of Cancellation of Original Service Agreement 14 with Village of Mt. Horeb.
Filed Date: 03/28/2008.
Accession Number: 20080331–0056.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–738–000.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits a Notice of Cancellation of Original Service Agreement 15 with Wisconsin Public Power Inc.
Filed Date: 03/28/2008.
Accession Number: 20080331–0058.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–739–000.
Applicants: Appalachian Power Company.
Description: American Electric Power Company Inc. submits First Revised Sheet 13 *et al.* to FERC Rate Schedule 151.
Filed Date: 03/28/2008.
Accession Number: 20080331–0059.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–740–000.
Applicants: Appalachian Power Company.
Description: Appalachian Power Company submits a Cost-Based Formula Rate Agreement—Rate Schedule 157 for Full Requirements Electric Service dated 03/26/07 with Kingsport Power Company.
Filed Date: 03/28/2008.
Accession Number: 20080331–0060.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–741–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a Letter Agreement for Services to Replace the Remote Terminal Unit at TM Goodrich Receiving Station between City of Pasadena.
Filed Date: 03/28/2008.
Accession Number: 20080331–0155.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–742–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits an unexecuted cost-based formula rate Power Sales Agreement for Full Requirements Wholesale Electric Service with Rio Grande Electric Cooperative Inc.
Filed Date: 03/28/2008.
Accession Number: 20080401–0079.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–742–001.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits an unexecuted cost-based formula rate Power Sales Agreement for Full Requirements Wholesale Electric Service between EPE and Rio Grande Electric Cooperative Inc.
Filed Date: 03/31/2008.
Accession Number: 20080401–0061.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–743–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool Inc. submits revised pages to its Open Access Transmission Tariff or intended to implement a rate change for Westar Energy, Inc., which is a transmission owner and pricing zone under the SPP tariff.
Filed Date: 03/28/2008.
Accession Number: 20080401–0064.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–744–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits revisions to the PJM Open Access Transmission Tariff and Amended and Restated Operating Agreement.
Filed Date: 03/28/2008.
Accession Number: 20080401–0065.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–746–000.
Applicants: Southwest Power Pool.
Description: Southwest Power Pool, Inc. submits a proposal to revise its OATT.
Filed Date: 03/28/2008.
Accession Number: 20080401–0095.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–748–000.
Applicants: Public Service Electric and Gas Company; PSEG Energy Resources & Trade LLC.
Description: Public Service Electric and Gas Co *et al.* submit a request for waivers of affiliate standards and authorizations for sales etc.
Filed Date: 03/31/2008.
Accession Number: 20080331–4009; 20080401–0093.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–749–000.
Applicants: Xcel Energy; Southwestern Public Service Company.
Description: Southwestern Public Service Company submits increased rates, to be effective 6/1/08, applicable to service to the wholesale full requirements customers etc.
Filed Date: 04/02/2008.
Accession Number: 20080402–0062.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 23, 2008.

Docket Numbers: ER08–753–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits a Network Operating Agreement executed with Rio Grande Electric Cooperative, Inc.
Filed Date: 03/28/2008.
Accession Number: 20080401–0060.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–754–000.
Applicants: The American Electric Power Service Corp.
Description: American Electric Power Service Corporation submits a Notice of Cancellation of Service Agreements under CSW Operating Companies Second Substitute FERC Electric Tariff, Original Volume 8.
Filed Date: 03/31/2008.
Accession Number: 20080401–0063.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–756–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc. on behalf of Alabama Power Company *et al.* submits Transmission Facility Cost Allocation Tariff and Pro Forma Service Agreement.
Filed Date: 03/28/2008.
Accession Number: 20080401–0059.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–757–000.
Applicants: The American Electric Power Service Corp.
Description: American Electric Power Service Corporation submits Notice of Cancellation of Service Agreements under American Electric Power Service Corporation's FERC Electric Tariff, First Revised Volume 2, effective 3/31/08.

Filed Date: 03/31/2008.
Accession Number: 20080401–0062.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–758–000.
Applicants: The American Electric Power Service Corp.
Description: American Electric Power Company Inc. submits Notice of Cancellation of Service Agreements under American Electric Power Service Corporation's FERC Electric Tariff, Original Volume 5.
Filed Date: 03/31/2008.
Accession Number: 20080401–0066.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–759–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits changes in the rates set forth in its Transmission Owner Tariff.
Filed Date: 03/28/2008.
Accession Number: 20080401–0058.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–760–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits proposed amendments to the ISO Tariff to implement a Transitional Capacity Procurement Mechanism.
Filed Date: 03/28/2008.
Accession Number: 20080401–0080.
Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–761–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company doing business as Progress Energy Carolinas, Inc. submits a Power Sales Agreement between PEC and North Carolina Electric membership Corporation, Rate Schedule FERC 179, etc.
Filed Date: 03/31/2008.
Accession Number: 20080401–0055.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES08–39–000.
Applicants: Allegheny Generating Company; Monongahela Power Company; West Penn Power Company; The Potomac Edison Company.
Description: Joint Application Under Section 204 of the Federal Power Act for Authorization Under Section 204(A) to Issue Short-Term Debt in Connection with the Allegheny Money Pool by Monongahela Power Company, *et al.*
Filed Date: 04/01/2008.
Accession Number: 20080402–5009.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ES08–40–000.
Applicants: Golden Spread Cooperative, Inc.
Description: Application of Golden Spread Electric Cooperative, Inc., for Authorization to Issue Securities.
Filed Date: 04/01/2008.
Accession Number: 20080402–5011.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA07–28–002.
Applicants: Avista Corporation.
Description: Avista Corporation's Compliance Filing.
Filed Date: 04/01/2008.
Accession Number: 20080401–5106.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: OA07–44–003.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submit an Annual Compliance Report as required by order Nos. 890 and 890–A.
Filed Date: 04/01/2008.
Accession Number: 20080401–5176.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: OA07–53–002; OA08–67–002.
Applicants: Progress Energy, Inc.
Description: Correction Filing supplements March 3, 2008, compliance filing by Progress Energy, Inc., on behalf of Carolina Power & Light Co. and Florida Power Corp.
Filed Date: 03/31/2008.
Accession Number: 20080331–5074.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: OA07–104–001.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits Substitute First Revised Sheet 163 *et al.* to FERC Electric Tariff, 1st Revised Volume 4, in compliance with the Commission's 2/25/08 Letter Order.
Filed Date: 03/26/2008.
Accession Number: 20080328–0122.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 16, 2008.

Docket Numbers: OA08–63–000.
Applicants: Ohio Valley Electric Corporation.
Description: Order No. 890–A OATT Filing of Ohio Valley Electric Corporation.
Filed Date: 03/14/2008.
Accession Number: 20080314–5084.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: OA08–78–001.
Applicants: MidAmerican Energy Company.
Description: Errata to Order No. 890–A Implementation Filing.
Filed Date: 03/31/2008.
Accession Number: 20080401–5132.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: OA08–93–001.
Applicants: South Carolina Electric & Gas Company.
Description: Redline Tariff of South Carolina Electric & Gas Company.
Filed Date: 03/27/2008.
Accession Number: 20080328–5122.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: OA08–96–000.
Applicants: Southern Company.
Description: Order No. 890 compliance filing of Southern Company's proposing mechanisms for the distribution of penalty revenues.
Filed Date: 04/01/2008.
Accession Number: 20080401–5172.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: OA08–97–000.
Applicants: MidAmerican Energy Company.
Description: Order Nos. 890 and 890–A Implementation Filing of MidAmerican Energy Company.
Filed Date: 04/01/2008.
Accession Number: 20080402–5035.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–7421 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–50–000]

Louisiana Public Service Commission: Complainant, v. System Energy Resources, Inc., and Entergy Services, Inc.: Respondents; Notice of Complaint

April 2, 2008.

Take notice that on March 31, 2008, the Louisiana Public Service Commission filed a formal complaint against System Energy Resources, Inc. (SERI), and Entergy Services, Inc., pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e and 18 CFR 386.206, alleging that depreciation and decommissioning expenses should be calculated for the Grand Gulf Nuclear Unit and the Unit Power Sales Agreement using the current estimated useful life of that unit and that the return on equity allowed to SERI under the Unit Power Sales Agreement should be lowered.

The Louisiana Public Service Commission certifies that copies of the complaint were served on the contacts for System Energy Resources, Inc., and Entergy Services, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on April 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7420 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Wednesday April 2, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–200–187.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits a negotiated rate agreement with Laclede Energy Resources, Inc.

Filed Date: 03/31/2008.

Accession Number: 20080401–0029.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–200–188.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits a negotiated rate agreement with Coral Energy Resources, LP.

Filed Date: 03/31/2008.

Accession Number: 20080401–0030.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–200–189.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits a negotiated rate agreement with Aquila, Inc.

Filed Date: 03/31/2008.

Accession Number: 20080401–0031.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–200–190.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits a negotiated rate agreement with Oneok Energy Services Company, LP.

Filed Date: 03/31/2008.

Accession Number: 20080401–0033.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–200–191.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits two negotiated rate agreements with ConAgra Trade Group, Inc.

Filed Date: 03/31/2008.

Accession Number: 20080401–0032.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–272–071.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 47 Revised Sheet 66A et al to its FERC Gas Tariff, Fifth Revised Volume 1, to become effective 4/1/08.

Filed Date: 03/31/2008.

Accession Number: 20080401–0036.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–320–085.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company LP submits a negotiated rate

letter agreement executed with Atmos Energy Corporation as Contract 35227.

Filed Date: 03/31/2008.

Accession Number: 20080401–0040.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–320–086.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company LP submits a negotiated rate letter agreement executed with Atmost Energy Corporation as Contract 35266.

Filed Date: 03/31/2008.

Accession Number: 20080401–0041.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP96–320–087.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company LP submits a negotiated rate letter agreement executed with Willmut Gas & Oil Co as Contract 35221.

Filed Date: 03/31/2008.

Accession Number: 20080401–0042.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–176–159.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits amendment with negotiated rate exhibits to existing Transportation Rate Schedule FTS Agreement w/Nicor Gas Company etc.

Filed Date: 03/31/2008.

Accession Number: 20080331–0173.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–285–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Company, LLC submits First Revised Sheet 314 to FERC Gas Tariff, Original Volume 1, to become effective 4/28/08.

Filed Date: 03/27/2008.

Accession Number: 20080328–0133.

Comment Date: 5 p.m. Eastern.

Docket Numbers: RP08–291–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Company LP submits their Annual Report of Flow Through of Penalty Revenues.

Filed Date: 03/31/2008.

Accession Number: 20080401–0038.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–292–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Company LP submits Eighteenth Revised Sheet 4 et al. to FERC Gas Tariff, Third Revised Volume 1, to become effective 5/1/08.

Filed Date: 03/31/2008.

Accession Number: 20080401–0037.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–293–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Penalty Revenue Crediting Report for Natural Gas Pipeline Company of America LLC.

Filed Date: 03/31/2008.

Accession Number: 20080331–5058.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–294–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Co submits Eleventh Revised Sheet 99 to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 03/31/2008.

Accession Number: 20080401–0027.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–295–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corp submits Seventh Revised Sheet 197 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 03/31/2008.

Accession Number: 20080401–0028.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–297–000.

Applicants: Southern LNG Inc.

Description: Southern LNG, Inc submits First Revised Sheet 69 et al. to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 03/31/2008.

Accession Number: 20080401–0196.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–298–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Co, LLC submits its Second Revised Sheet 200 et al. to its FERC Gas Tariff, Original Volume 1.

Filed Date: 03/31/2008.

Accession Number: 20080401–0195.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–299–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corp submits copies of the 113th Revised Sheet 9 to its FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 03/31/2008.

Accession Number: 20080401–0194.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, D.C. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–7422 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 1, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–286–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits its Cashout Report for November 2006 through October 2007.
Filed Date: 03/28/2008.
Accession Number: 20080331–0053.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP08–287–000.
Applicants: Rockies Express Pipeline LLC.
Description: Annual Incidental Purchases and Sales Report of Rockies Express Pipeline LLC.
Filed Date: 03/28/2008.
Accession Number: 20080328–5093.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP08–288–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits part of Trailblazer's FERC Gas Tariff, Fourth Revised Volume 1 tariff and First Revised Sheet 11.
Filed Date: 03/28/2008.
Accession Number: 20080331–0120.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP08–289–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Fifteenth Revised Sheet 17A and Third Revised Sheet 17B of its FERC Gas Tariff, Second Revised Volume 1, to become effective May 1, 2008.
Filed Date: 03/28/2008.
Accession Number: 20080331–0121.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP08–296–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Horizon Pipeline Company, L.L.C.'s Penalty Revenue Crediting Report.
Filed Date: 03/28/2008.
Accession Number: 20080331–5095.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP96–320–083.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company LP submits an amendment to a negotiated rate letter agreement executed by Gulf South and one of its customers in relation to the East Texas to Mississippi Expansion Project etc.
Filed Date: 03/28/2008.
Accession Number: 20080331–0122.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 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.

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Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E8–7423 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

April 3, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–480–020.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission LP submits Original Sheet 118 et al. to FERC Gas Tariff, Seventh Revised Volume 1.
Filed Date: 04/01/2008.
Accession Number: 20080403–0044.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–513–045.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Forty-Third Revised Sheet 7 et al. to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/07.
Filed Date: 04/02/2008.
Accession Number: 20080403–0042.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP05–157–011.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Saltville Gas Storage Company LLC submits Original Sheet 21A to FERC Gas Tariff, Original Volume 1, to become effective 4/1/08.
Filed Date: 04/01/2008.
Accession Number: 20080403–0043.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–303–000.
Applicants: CenterPoint Energy Gas Transmission Co.
Description: CenterPoint Energy Gas Transmission Co submits Sixteenth Revised Sheet 17 et al. to its FERC Gas Tariff, Sixth Revised Volume 1, to be effective 5/1/08.
Filed Date: 04/01/2008.
Accession Number: 20080402–0090.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–304–000.
Applicants: Freebird Gas Storage, LLC.

Description: Freebird Gas Storage, LLC submits Original Sheet 1 et al. to FERC Gas Tariff, First Revised Volume 1, to become effective 5/1/08.

Filed Date: 04/01/2008.

Accession Number: 20080403–0253.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–305–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Co submits First Revised Sheet 241 to FERC Gas Tariff, Second Revised Volume 1, to become effective 5/2/08.

Filed Date: 04/02/2008.

Accession Number: 20080403–0251.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–7424 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 3, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–176–160.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits the Third Revised Sheet 26U to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 4/1/08.

Filed Date: 04/01/2008.

Accession Number: 20080402–0085.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–301–201.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits an amendment to one Rate Schedule FSS negotiated rate agreement between ANR and Wisconsin Gas LLC.

Filed Date: 04/01/2008.

Accession Number: 20080402–0080.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–301–202.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits an amendment to Rate Schedule FSS negotiated rate agreements between ANR and Wisconsin Public Service Corp.

Filed Date: 04/01/2008.

Accession Number: 20080402–0081.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–301–203.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits an amendment to Rate Schedule FSS negotiated rate agreement between ANR and Wisconsin Electric Power Co.

Filed Date: 04/01/2008.

Accession Number: 20080402–0082.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–301–204.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits Rate Schedule FTS–1 and Gathering negotiated rate service agreement between ANR and Eagle Energy Partners I, LP etc.

Filed Date: 04/01/2008.

Accession Number: 20080402–0083.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–301–205.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits amendment to Rate Schedule FSS negotiated rate agreement between ANR and Wisconsin Electric Power Co.

Filed Date: 04/01/2008.

Accession Number: 20080402–0086.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP99–301–206.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits amendment to Rate Schedule FTS–1 negotiated rate agreements and Rate Schedule ETS negotiated rate agreement between ANR and Wisconsin Public Service Corporation.

Filed Date: 04/01/2008.

Accession Number: 20080402–0087.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP00–426–033.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Original Sheet 55B et al. to FERC Gas Tariff, Second Revised Volume 1 etc.

Filed Date: 03/31/2008.

Accession Number: 20080402–0088.

Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP02–534–006.

Applicants: Guardian Pipeline, LLC.

Description: Guardian Pipeline LLC submits First Revised Sheet 7 to FERC Gas Tariff, Original Volume 1, to become effective 4/1/08.

Filed Date: 03/28/2008.

Accession Number: 20080401–0039.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP06–407–009.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corp's CD that contains the Rate Case Settlement Refund Report, Cover Letter, and Appendices A-E.

Filed Date: 03/28/2008.

Accession Number: 20080328–4005.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Docket Numbers: RP06–595–010.
Applicants: Discovery Gas Transmission LLC.
Description: Discovery Gas Transmission LLC submits the Tenth Revised Sheet 22 et al. to FERC Gas Tariff, Original Volume 1 to become effective 4/1/08.
Filed Date: 04/01/2008.
Accession Number: 20080402–0084.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–267–001.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Notice of Withdrawal of First Revised Sheet 381 of its FERC Gas Tariff, Seventh Revised Volume 1.
Filed Date: 03/31/2008.
Accession Number: 20080401–0197.
Comment Date: 5 p.m. Eastern Time on Wednesdays, April 9, 2008.

Docket Numbers: RP08–301–000.
Applicants: Vector Pipeline L.P.
Description: Vector Pipeline, LP submits its Annual Fuel Use Report for the period 1/1/07 through 12/31/07 pursuant to Section 154.502 of the Commission's Regulations.
Filed Date: 03/31/2008.
Accession Number: 20080402–0100.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

Docket Numbers: RP08–302–000.
Applicants: Avista Corporation.
Description: Avista Corp submits Third Revised Sheet 3 et al. to its FERC Gas Tariff, Original Volume 2, to become effective April 30, 2008.
Filed Date: 03/31/2008.
Accession Number: 20080402–0089.
Comment Date: 5 p.m. Eastern Time on Monday, April 14, 2008.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E8–7425 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Initial Market-Based Rate Filings

April 3, 2008.

Take notice that the Commission received the following filings seeking market-based rate authorization. Such filings may include certain waivers and blanket approvals, including blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the applicants:

Docket Numbers: ER08–765–000.
Applicants: KD Power Marketing Services, LLC.
Description: KD Power Marketing Services, LLC submits an Application for Acceptance of Initial Market-Based Rate Tariff, Waivers and Blanket Approvals.
Filed Date: 03/31/2008.
Accession Number: 20080402–0110.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–770–000.
Applicants: Longview Power, LLC.
Description: Longview Power, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authorization, and Request for Expedited Treatment.
Filed Date: 03/31/2008.
Accession Number: 20080403–0073.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–771–000.
Applicants: North Allegheny Wind, LLC.
Description: North Allegheny Wind, LLC submits an Application for Order Accepting Market-Based Rate Tariff, Granting Waivers and Blanket Authority.
Filed Date: 04/01/2008.
Accession Number: 20080403–0072.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–776–000.
Applicants: Panda Brandywine LP.
Description: Panda-Brandywine, LP submits an Application for an Order Accepting Initial Market-Based Rate Tariff, Waiving Regulations, and Granting Blanket Approvals.
Filed Date: 04/02/2008.
Accession Number: 20080403–0066.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 23, 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.

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eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–7436 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Date: April 03, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–64–000.

Applicants: FirstEnergy Nuclear Generation Corp.

Description: FirstEnergy Nuclear Generation Corp. submits an application requesting authorization to consummate transactions whereby FE Nuclear may acquire interests in existing generating facilities pursuant to Section 203 of FPA.

Filed Date: 03/28/2008.

Accession Number: 20080401–0083.

Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2156–013; ER96–719–019; ER97–2801–020.

Applicants: Cordova Energy Company LLC; MidAmerican Energy Company; PacifiCorp.

Description: Cordova Energy Company LLC et al. submits workpapers of Mr Rodney Frame that support their 3/31/08 filing of change in status.

Filed Date: 03/31/2008; 04/01/2008.

Accession Number: 20080402–0113; 20080402–0125.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER06–613–005.

Applicants: ISO New England Inc.

Description: ISO New England submits report on the status of the implementation of certain reserve market changes that were included as part of Phase II of the Ancillary Services Market Project.

Filed Date: 04/01/2008.

Accession Number: 20080403–0068.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–375–002.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a descriptive list of the costs that they included as Construction Work in Progress in rate base.

Filed Date: 03/31/2008.

Accession Number: 20080402–0103.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–441–002.

Applicants: Velocity American Energy Master I, L.P.

Description: Velocity American Energy Master I, LP submits Original Sheet 1 to FERC Electric Tariff, Original Volume 1.

Filed Date: 04/02/2008.

Accession Number: 20080403–0078.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 23, 2008.

Docket Numbers: ER08–631–001.

Applicants: Raider Dog LLC.

Description: Raider Dog LLC submits an amendment to the petition for application for acceptance of initial tariff, waivers and blanket authority.

Filed Date: 03/31/2008.

Accession Number: 20080402–0105.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–665–001.

Applicants: Eastland Power LLC.

Description: Eastland Power, LLC submits an amended application for market-based authorizations, certain waivers and blanket Authorizations and request for expedited treatment.

Filed Date: 03/31/2008.

Accession Number: 20080402–0104.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–745–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Agreements for wholesale distribution service and Interconnection between PG&E and Electric Company and Hercules Municipal Utility.

Filed Date: 03/31/2008.

Accession Number: 20080403–0040.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–749–000.

Applicants: Xcel Energy; Southwestern Public Service Company.

Description: Southwestern Public Service Company submits increased rates, to be effective June 1, 2008 applicable to service to wholesale full requirements customers Cap Rock Energy Corporation *et al.*

Filed Date: 03/31/2008.

Accession Number: 20080402–0063.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–750–000.

Applicants: Entergy Services, Inc.; Entergy Arkansas Inc.

Description: Entergy Arkansas Inc submits the 2008 Wholesale Formula Rate Update in accordance with the Power Coordination, Interchange and Transmission Service Agreements with the City of Osceola Arkansas Corp.

Filed Date: 03/28/2008.

Accession Number: 20080401–0092.

Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–751–000.

Applicants: Entergy Services, Inc.; Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc submits the 2008 Wholesale Formula Rate Update.

Filed Date: 03/28/2008.

Accession Number: 20080401–0091.

Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–752–000.

Applicants: Entergy Services, Inc.; Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc submits the 2008 Wholesale Formula Rate Update.

Filed Date: 03/28/2008.

Accession Number: 20080401–0090.

Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–762–000.

Applicants: New England Power Pool.

Description: The New England Power Pool Participants Committee submits member applications and terminations of NEPOOL Membership.

Filed Date: 04/01/2008.

Accession Number: 20080402–0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–763–000.

Applicants: Appalachian Power Company.

Description: Appalachian Power Co submits a Cost-Base Formula Rate Agreement, FERC Rate Schedule 156.

Filed Date: 04/01/2008.
Accession Number: 20080402–0102.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–764–000.
Applicants: Consolidated Edison Co. of New York, Inc.
Description: Consolidated Edison Company of New York, Inc. submits amendments to their Delivery Service Rate Schedule 96 *et al.*
Filed Date: 03/31/2008.
Accession Number: 20080402–0111.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–766–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an unexecuted service agreement for Network Integration Transmission Service with Kansas Power Pool.
Filed Date: 03/31/2008.
Accession Number: 20080402–0108.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–767–000.
Applicants: Entergy Services Inc.
Description: Entergy Arkansas, Inc. requests that FERC accept their request for authorization to recover Schedule 9 costs etc.
Filed Date: 03/31/2008.
Accession Number: 20080402–0107.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–768–000.
Applicants: Xcel Energy Services Inc.
Description: Public Service Company of Colorado submits an Emergency Assistance Operating Agreement with Public Service Company of New Mexico.
Filed Date: 03/31/2008.
Accession Number: 20080403–0075.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ER08–769–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits a Network Integration Transmission Service Agreement and Network Operating Agreement with Atlantic Municipal Utilities dated 3/31/08 to MidAmerican's Open Access Transmission Tariff.
Filed Date: 04/01/2008.
Accession Number: 20080403–0074.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–772–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc submits an executed Wholesale Distribution Service Agreement with Zeeland Board of Public Works, a Department of The City of Zeeland.
Filed Date: 04/01/2008.
Accession Number: 20080403–0071.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–773–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corporation submits its FERC Electric Tariff, Fifth Revised Volume 1 and two revised service agreements between WPSC and Manitowoc Public Utilities under ER08–773.
Filed Date: 04/01/2008.
Accession Number: 20080403–0070.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–774–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits an amendment to the Entergy System Agreement.
Filed Date: 04/01/2008.
Accession Number: 20080403–0069.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–775–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an executed Interconnection Service Agreement among PJM, Tenaska Virginia II Partners, LP and Virginia Electric and Power Company etc.
Filed Date: 04/01/2008.
Accession Number: 20080403–0067.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–777–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy Inc *et al.* submits the revised tariff sheets to the Rate Formula Template set forth as Attachment H–1 to their FERC Open Access Transmission Tariff.
Filed Date: 04/01/2008.
Accession Number: 20080403–0065.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 22, 2008.

Docket Numbers: ER08–778–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator Inc submits its Open Access Transmission Tariff & Market Administration and Control Area Services tariff to modify the credit requirements for holding Transmission Congestion Contracts.
Filed Date: 04/02/2008.
Accession Number: 20080403–0084.
Comment Date: 5 p.m. Eastern Time on Thursday, April 17, 2008.

Docket Numbers: ER08–780–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits revisions to the PJM Open Access Transmission Tariff and Amended and Restated Operating Agreement.
Filed Date: 03/31/2008.
Accession Number: 20080403–0098.
Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–2–002.
Applicants: Sierra Pacific Resources Operating Company.
Description: Order No. 890 OATT Imbalance Penalty Revenue Compliance Filing of Sierra Pacific Resources Operating Companies.
Filed Date: 04/02/2008.
Accession Number: 20080403–5034.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 23, 2008.

Docket Numbers: OA08–98–000.
Applicants: Aquila, Inc.
Description: Aquila, Inc.'s Order No. 890–A Compliance Filing in OA08–98.
Filed Date: 04/03/2008.
Accession Number: 20080403–5035.
Comment Date: 5 p.m. Eastern Time on Thursday, April 24, 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–7437 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–51–000]

Louisiana Public Service Commission: Complainant v. Entergy Corporation, et al.: Respondents; Notice of Complaint

April 2, 2008.

Take notice that on March 31, 2008, the Louisiana Public Service Commission filed a formal complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, Inc., and Entergy Texas, Inc. (collectively, Energgy), pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e and 18 CFR 386.206, alleging that there are errors in the calculation of Exhibits ETR–26 and ETR–28, which form the basis for the rough equalization remedy and that Entergy used incorrect data and included imprudent costs in its implementation filing in Docket No. ER07–956–000.

The Louisiana Public Service Commission certifies that copies of the complaint were served on the contacts for Entergy Corporation and Entergy Services, Inc as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on April 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7417 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659–014]

Crisp County Power Commission; Notice of Availability of Environmental Assessment

April 2, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for a New Major License for the Lake Blackshear Hydroelectric Project.

The project is located in Southwest Georgia in Worth, Lee, Sumter, Dooly, and Crisp Counties. The project does not occupy any federal lands. Staff has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 659–014 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, please contact Allyson Conner at (202) 502–6082 or at *allyson.conner@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7416 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12882–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12882–000.

c. *Date filed:* July 25, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 35'' Project.

f. *Location:* The project would be located in the North Inian Pass and South Inian Pass, just outside Glacier Bay National Park, in the Skagway-Hoonah-Angoon Census Area. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12882–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) Two arrays, each consisting of five, one megawatt hydrokinetic turbine units, for a total installed capacity of 10 megawatts, (2) a proposed 100 kV transmission line of a length of approximately 60 miles, (3) pilings to permanently attach the units to the bedrock, and (4) appurtenant facilities. The project would have an average annual generation of 30.425 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7419 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR08–9–000]

TransCanada Keystone Pipeline, LP; Notice of Petition For Declaratory Order

April 2, 2008.

Take notice that, on March 28, 2008, TransCanada Keystone Pipeline, L.P. (Keystone), pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2007), tendered for filing to the Commission a petition to issue a declaratory order approving the rate structure agreed to by Keystone and shippers which have made long-term commitments and the methodology by which Keystone plans to design its uncommitted rate. Keystone also requests approval to offer and provide firm transportation, or unapportioned access, for committed shippers. Keystone respectfully requests that the Commission act on this petition in an expedited fashion.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). for assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7418 Filed 4–8–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0091; FRL–8359–3]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, 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–2008–0091. 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. EUP

EPA has issued the following EUP:

73049–EUP–4. Issuance. Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. This EUP allows the use of 10,006 pounds of the plant regulator S-abscisic acid (3335.33 pounds per year) on 5,000 acres of grapes (per year) to evaluate the effects of S-abscisic acid on grape maturation and coloration. The program is authorized only in the States of California, Michigan, New York, Oregon, Texas, and Washington. The EUP is effective from March 20, 2008 to October 1, 2010.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 2, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–7459 Filed 4–8–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Requirements Being Submitted to OMB for Emergency Review and Approval, Comments Requested

April 4, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as

required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 28, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirements contained in this notice and has requested OMB approval by May 7, 2008.

OMB Control Number: 3060–XXXX.

Title: Viewer Notification Requirements in Third DTV Periodic Report and Order, FCC 07–228.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents/Responses: 1,000; 120,000.

Estimated Hours per Response: 0.01 – 0.33 hours.

Frequency of Response: Recordkeeping requirement; Third Party disclosure requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 8,380 hours.

Total Annual Costs: $200,000.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 22, 2007, the Commission adopted a Report and Order, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–228 (''Third DTV Periodic Report and Order'') to establish the rules, policies and procedures necessary to complete the nation's transition to DTV. In the Report and Order, the Commission adopted rules to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission affords broadcasters the opportunity for regulatory flexibility, if necessary, to meet their DTV construction deadlines. The Commission, however, must also ensure that no consumers are left behind in the DTV transition. Therefore, the Commission requires broadcasters that choose to reduce or terminate TV service to comply with viewer notification requirements

Specifically, as a result of the Third DTV Periodic Report and Order, stations must comply with a viewer notification requirement (*i.e.*, stations must notify viewers about their planned service reduction or termination) if:

(1) The station will permanently reduce or terminate analog or pre-transition digital service before the transition date; or

(2) The station will not serve at least the same population that receives their current analog TV and DTV service after the transition date.

Viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-days prior to the station's termination of full, authorized analog service. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service or the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, i.e., how and when the station's digital signal can be received; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information.

OMB Control Number: 3060–0386.

Title: Special Temporary Authorization (STA) Requests, 47 CFR 73.1635; Notifications, 47 CFR 73.1615; and Informal Filings (47 CFR part 73).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents/Responses: 3,710.

Estimated Hours per Response: 30 minutes to 4 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required.

Total Annual Burden: 4,020 hours.

Total Annual Costs: $3,921,890.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 31, 2007, the Commission released a Report and Order, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–228. In the Report and Order, the Commission adopted rules to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission authorized the following ''DTV Transition-related'' filings, which must be made electronically via the FCC's Consolidated Database System (''CDBS''), to permit broadcasters to request and obtain regulatory flexibility from the Commission, if necessary, to meet their DTV construction deadlines:

• *STA for Phased Transition and Continued Interim Operations.* Stations may file a request for Special Temporary Authorization (STA) approval to temporarily remain on their in-core, pre-transition DTV channel after the transition date through the CDBS using the Informal Application Filing Form.

• *STA for Phased Transition/Build-Out.* Stations may file a request for STA approval to build less than full, authorized post-transition facilities by the transition date through the CDBS using the Informal Application Filing Form.

• *STA for Permanent Service Reduction or Termination.* Stations may file a request for STA approval to permanently reduce or terminate analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities through the CDBS using the Informal Application Filing Form.

• *Notification/Informal Letter of Temporary Service Disruption.* Stations may file a notification or informal letter pursuant to Section 73.1615 to temporarily reduce or cease existing analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities through the CDBS using the Informal Application Filing Form.

• *Notification of Service Reduction or Termination.* Stations may file a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date through the CDBS using the Informal Application Filing Form.

• *Informal Filings.* Stations claiming a ''unique technical challenge'' warranting a February 17, 2009 construction deadline may file a notification to document their status through the CDBS using the Informal Application Filing Form.

47 CFR 73.1635 states that broadcast stations (licensees or permittees) may file a request for Special Temporary Authority (STA) approval to permit a station to operate a broadcast facility for a limited period at a specified variance from the terms of the station's authorization or requirements of the FCC rules. Stations may file a request for STA approval for a variety of reasons. The request must describe the operating modes and facilities to be used.

The Commission is also consolidating information collection OMB Control Number 3060–0181 (47 CFR Section 73.1615 Operation During Modification of Facilities) into this collection, OMB Control Number 3060–0386 to avoid duplication of rule section 47 CFR 73.1635.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–7501 Filed 4–8–08; 8:45 am]

BILLING CODE 6712–01–P

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 *tradeanalysis@fmc.gov*).

Agreement No.: 011914–002.

Title: HLAG/CCNI Med-Gulf Space Charter Agreement.

Parties: Hapag-Lloyd AG and Compania Chilena de Navegacion Interoceanica.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement would reduce the space being chartered to CCNI, extend the period for notices of withdrawal, and update Hapag-Lloyd's corporate name.

Agreement No.: 012036.

Title: Maersk Line/MSC TP5 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and Mediterranean Shipping Company.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Maersk to charter space to MSC between South Korea, Japan, and California ports.

Agreement No.: 012037.

Title: Maersk Line/CMA CGM TA3 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Maersk to charter space to CMA in the trade between U.S. Atlantic Coast ports and ports in France, Germany, Netherlands, and the United Kingdom.

Agreement No.: 201180.

Title: SSA Terminal (Seattle) Cooperative Working Agreement.

Parties: SSA Terminals (Seattle), LLC; SSA Terminals, LLC; Matson Seattle, LLC; SSA Containers, Inc.; SSA Seattle, LLC; China Shipping Terminals (USA), LLC.

Filing Party: Tara L. Leiter, Esq.; Blank Rome LLP; 600 New Hampshire Avenue, NW.; Washington, DC 20037.

Synopsis: The agreement would authorize the parties to establish SSA Terminals (Seattle) and to make and implement agreements for marine terminal operations, container stevedoring, and any related services at the Port of Seattle, Washington.

Dated: April 4, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–7488 Filed 4–8–08; 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 Applicant

Anchor Advantage, LLC, 15 West Cranberry Lane, Greenville, SC 29615. Officers: Julie A. Farmer, Chief Logistics Officer (Qualifying Individual); Dee Wood Kivett, C.O.O.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

A.J. Worldwide Sevices Inc., 28 West 36th Street, New York, NY 10018. Officers: Shahryar, Haq, Vice President (Qualifying Individual); Vivek Vellore, President.

Joseph Smith Customs House Broker Inc., 210 E. Sunrise Hwy, Ste. 301, Valley Stream, NY 11581. Officers: Daniel Smith, Vice President (Qualifying Individual); Joseph Smith, President.

LT Shipping Inc., 8339 N.W. 66th Street, Miami, FL 33166. Officers: Santiago Lostorto, President (Qualifying Individual); Eduardo G. Gardell, Vice President.

Global Express Consolidators, Inc., 2775 W. Okeechobee Road, #146, Hialeah, FL 33010. Officers: Yusniel Rodriguez, President (Qualifying Individual); Loris Gutierrez, Corporate Secretary.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

ANMI Logistic Group, Inc., 8534 NW., 66 Street, Miami, FL 33166. Officers: Laura B. Bezrutschko, President (Qualifying Individual); Alejandro M. Arias, Secretary.

Worldwide Company LLC, 10616 Sawdust Circle, Rockville, MD 20850. Officer: Chih Min Hu, President (Qualifying Individual).

Newport Air Express Inc., 145–54A, 156th Street, Jamaica, NY 11434. Officers: Jerry Lo, Vice President (Qualifying Individual); Henry Wong, Managing Director.

Dated: April 4, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–7466 Filed 4–8–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

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.	Name/address	Date reissued
020768N	Continental Services & Carrier Inc., 5579 N.W. 72nd Avenue, Miami, FL 33166–4251	February 4, 2008.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8–7483 Filed 4–8–08; 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

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2008.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Kenneth R. Lehman and Joan A. Lehman, Arlington, Virginia; to retroactively increase their ownership of ICB Financial, and thereby indirectly control its subsidiary, Inland Community Bank, N.A., both of Ontario, California.

Board of Governors of the Federal Reserve System, April 4, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–7439 Filed 4–8–08; 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 application 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 May 2, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Northstar Financial Group, Inc., Bad Axe, Michigan; to acquire 100 percent of the voting shares of Grand Haven Bank, Grand Haven, Michigan, Kent Commerce Bank, Kentwood, Michigan, Muskegon Commerce Bank, Muskegon, Michigan and Paragon Bank and Trust, Holland, Michigan.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First Financial Service Corporation, Elizabethtown, Kentucky; to merge with FSB Bancshares, Inc., Lanesville, Indiana, and thereby indirectly acquire The Farmers State Bank, Lanesville, Indiana.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Carpenter Fund Manager GP, LLC, Carpenter Fund Management, LLC and Carpenter Community Bancfund-A, L.P., all of Irvine, California; to become bank holding companies by acquiring 24.3 percent of the voting shares of Mission Community Bancorp, and thereby its subsidiary, Mission Community Bank, both of San Luis Obispo, California.

Board of Governors of the Federal Reserve System, April 4, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–7440 Filed 4–8–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, April 14, 2008.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, April 4, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 08–1117 Filed 4–7–08; 11:41 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–100, State Plan Preprint Page; OCSE–21–U4, State Plan transmittal.

OMB No.: 0970–0017.

Description: Section 7310 of the Deficit Reduction Act of 2005, titled, Mandatory Fee for Successful Child Support Collection for a Family That Has Never Received TANF, amends Section 454(6) of the Social Security Act (the Act) such that a State child support plan must provide for the imposition of an annual fee of $25 in each case in which an individual has never received assistance under a State program funded under title IV–A of the Act and for whom the State has collected at least $500 of support. States will need to submit the new State plan preprint page, i.e., page 2.5–4, as well as a transmittal for the preprint page, in order to have an approved State plan.

The 60-day notice for this requirement was originally published in the Notice of Proposed Rulemaking (NPRN) in the **Federal Register** on January 24, 2007 (72 FR 3093); however, because of the October 1, 2006, effective date for the mandate that States implement and collect a $25-annual fee in specified cases, the second notice for the State plan preprint page must be published prior to the publication of the final rule.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	54	1	0.5	216
OCSE–21–U4	54	1	0.25	108

Estimated Total Annual Burden Hours: 324

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 3, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E8–7408 Filed 4–8–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Issuance of Final Policy Directive

AGENCY: Administration for Native Americans (ANA).

ACTION: Notice.

SUMMARY: The Administration for Native Americans (ANA) herein describes its issuance of final interpretive rules, general statements of policy and rules of agency procedure or practice relating to the Social and Economic Development Strategies (hereinafter referred to as SEDS), Native Language Preservation and Maintenance (hereinafter referred to as Native Language), Environmental Regulatory Enhancement (hereinafter referred to as Environmental) programs, Environmental Mitigation (hereinafter referred to as Mitigation), and Native American Healthy Marriage Initiative (hereinafter referred to as NAHMI).

DATES: March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher Beach, Division of Program Operations, at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974, as amended, requires ANA to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy and rules of agency organization, procedure or practice and to give notice of the final adoption of such changes at least 30 days before the changes become effective.

The ANA published a Notice of Public Comment (NOPC) in the **Federal Register** on January 11, 2008 (73 FR 2045) on the proposed ANA policy and program clarifications, modifications and activities for the FY 2008 program announcements. The NOPC closed February 11, 2008. ANA received no comments.

Additional Supplemental Information

This Final Issuance addresses two groups of changes:

- Changes made across all program areas (Part I). These are changes to text that is found in each PA program area. Therefore, the changes cited in Part I apply to all PAs.
- Changes made to specific program areas (Part II). ANA has made significant changes to the Native Language, NAHMI, SEDS and Mitigation programs. These changes are outlined in Part II.

I. All program announcements will be revised to clarify program and application submission requirements for the public. These changes appear in the following sections: Definitions (Part A), Funding Restrictions (Part B), and Evaluation Criteria (Part C). Finally, funding restriction information will be applicable to all program areas and all PAs.

(*A*) ANA Administrative Policies: As required by Department of Health and Human Services (HHS) appropriations acts, all HHS recipients must credit HHS/ACF on materials developed using ANA funds. Therefore, the following bullet has been modified to meet this agency requirement to credit HHS/ACF.

The FY 2008 PA revised administrative policy will be:

All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to HHS/ACF on all materials developed using HHS/ACF funds.

(*B*) ANA Definitions: ANA has added six new definitions and clarified the definition of eight words. These new and revised definitions are provided for areas that applicants have historically found difficult to understand, have previously prompted numerous questions and have created application and project development inconsistencies. In addition, the revisions reflect changes in the evaluation criteria for FY 2008 PA. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. *New Definitions:* The FY 2008 PA includes definitions for the following terms: impact, impact evaluation, project goal, project period, results and benefits, and statement of need.

The FY 2008 PAs will include these new definitions:

Impact: The change in the physical, economic, social, financial, governmental, institutional, behavioral, language or cultural conditions in a community as a result of the ANA-funded project.

Impact Evaluation: Site visits conducted by ANA to provide grantees the opportunity to share, through qualitative and quantitative information, how the project goal and objectives were accomplished and how the identified community was impacted by the ANA-funded project.

Project Goal: The specific result or purpose expected from the project. The project goal specifies what will be accomplished over the entire project period. The project goal relates to the community goal and is achieved through the project objectives and activities. The project goal should directly relate to the statement of need.

Project Period: The total time for which the recipients' project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress and a determination by HHS that continued funding is in the best interest of the Government.

Results and Benefits: Measurement descriptions used to track the progress of accomplishing an individual objective. The results and benefits must directly relate to the objective and the activities outlined in the Objective Work Plan (OWP) and include target numbers used to track the project's quarterly progress.

Statement of Need: A clear, concise and precise description of the nature, scope and severity of a problem. A statement of need typically identifies the specific physical, economic, social, financial, governmental, institutional, behavioral, language or cultural challenges of the community. The statement of need is the problem that the proposed project will address.

ii. Revised Definitions: The FY 2008 PA clarifies definitions for the following terms: budget period, completed project, impact indicators, in-kind contributions, letter of commitment, leveraged resources, objective and OWP.

The FY 2008 PA revised definitions will be:

Budget Period: The interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Completed Project: A project funded by ANA is finished, self-sustaining or funded by other than ANA funds and the results and outcomes of the funded project goal are achieved by the end of the project period.

Impact Indicators: Measurement descriptions used to verify the impact or

the achievement of the project goal. Indicators must be quantifiable and documented. Impact indicators include target numbers and tracking systems. ANA requires three impact indicators per project. Impact indicators are separate from the results and benefits section of the Objective Work Plan (OWP).

In-Kind Contributions: In-kind contributions are the value of goods and/or services that benefit a Federally assisted project. In-kind contributions are provided without charge to a recipient (or sub-recipient or cost-type contractor under a grant). Any proposed in-kind match must meet the applicable requirements found in 45 Code of Federal Regulations (CFR) Part 74 and Part 92.

Letter of Commitment: A letter documenting the commitment to provide cash or in-kind contributions to meet the applicant match requirement. The letter of commitment may be from the applicant or a third-party. The letter of commitment must state the dollar amount (if applicable), the length of time the commitment will be honored and the conditions under which the organization will support the ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The in-kind contributions to be committed may be human, natural, physical or financial, and may include other Federal and non-Federal resources.

Leveraged Resources: The non-ANA resources acquired during the project period that support the project and exceed the 20 percent applicant match required for ANA grants. Such resources may include any natural, financial and physical resources available within the Tribe, organization or community to assist in the successful completion of the project. An example would be an organization that agrees to provide a supportive action, product, service, human or financial contribution that will add to the potential success of the project.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the OWP. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement of the stated project goals. These measurable outcomes are documented in the results and benefits section of the OWP. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Each objective should be Specific, Measurable, Achievable, Results-oriented and Time-bound (SMART). Objectives are the foundation for the OWPs. A project cannot have more than three objectives per project period. Objectives may last more than one budget period for multi-year projects.

Objective Work Plan (OWP): The ANA form that documents the project plan the applicant will use to achieve the objectives and produce the results and benefits expected for each objective. The OWP provides a project goal statement, objectives and detailed activities proposed for the project and how, when, where and by whom the activities will be carried out. ANA will require separate OWPs for each year of the project (the Office of Management and Budget (OMB) No. 0980–0204, exp. 12/31/2009).

(C) ANA Disqualification Factors: In order to align to the new OMB format for Announcement of Federal Funding, ANA is relocating and clarifying the long standing Tribal Resolution Administrative policy statement. The Administrative Policy statement will be removed from Section I Funding Opportunity Description, ANA Administrative Policies to Section III.3 Disqualification Factors.

The FY 2008 PA new disqualification factor will be:

Applications, including Tribally authorized components and divisions, must include a Resolution (a formal decision voted on by the official governing body) approving the application. The Resolution must be current, signed, dated and cover the entire project period. Applications that do not include a complete Resolution will be considered non-responsive and the application will not be considered for competition.

(D) ANA Funding Restrictions: To reduce uncertainty, ANA has clarified its funding restriction policies. The first three bulleted statements identified below provide clarity on program project funding overlaps. This change ensures that ANA provides project funding to the greatest number of needy communities. The fourth bulleted statement clarifies the realignment of ANA goals across all program areas, provides clarity on funding restrictions applicable to projects submitted with critical gaps in the project plan and requires significant revisions to the OWP, project approach or the implementation strategy. The fifth bulleted statement restricts funding for projects that support Native languages that do not have living speakers. This restriction ensures that ANA's limited funds preserve and maintain currently spoken languages, especially those in danger of losing living speakers. It also promotes inter-generational communication so that speakers, generally elders, teach youth. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA text will be:

- Projects that allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on grant awards ANA will assess and consider whether the community or region is already receiving funding for a SEDS, Native Language or Environmental project from ANA.
- Applicants that submit a project that is essentially identical or similar in whole or in part, to previously funded projects.
- Projects that are essentially identical or similar in whole or in part to previously funded projects in the same community.
- Projects that do not further the three inter-related ANA goals of economic development, social development and cultural preservation or are unlikely to be successful based on the proposed project approach and implementation strategy.
- Projects that seek to revive Native languages that do not have any living speakers.

(E) ANA Application Evaluation Criteria: In order to clarify for the applicant the necessity to provide appropriate information under each evaluation criteria, ANA has further defined application titles, reconfigured the assigned criteria weight and clarified the text within each criterion to avoid duplication of information requested.

i. Titles and Assigned Weight: In the FY 2008 PA ANA will adjust the weighted scores for all criteria in all program areas. The weighted score adjustments are made to indicate the value of the evaluation criteria and the criterion titles are changed to add clarity to the focus of the criterion section. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

For the FY 2008 ANA Program Announcement, the criteria weighted scores will be:

Criterion One—Project Summary (3 pts.);

Criterion Two—Need for Assistance (18 pts.);

Criterion Three—Project Approach (40 pts.);

Criterion Four—Organizational Capacity (17 pts.);
Criterion Five—Project Impact/Evaluation (7 pts.);
Criterion Six—Budget and Budget Justification/Cost Effectiveness (15 pts.).

ii. ANA Evaluation Criteria.

a. Criterion One—Project Summary: The request for an introductory summary narrative text will be removed from the FY 08 PA because the same information is also requested for the ANA Project Abstract form. This change reduces redundancy in the application process. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The New FY 2008 PA text for criterion one will be:

Project Summary: This criterion will be evaluated to the extent the ANA Project Abstract form is present and properly completed. The Project Abstract provides crucial project information in a concise format and is used by the independent review panel, ANA staff and the Commissioner during all phases of the review process. The project summary section of the abstract focuses on the specific purpose of the proposal. The summary must include a brief statement of need, the project goal, project objectives and impact indicators. The Abstract must clearly indicate the Priority Area for which the applicant is submitting the application for funding consideration.

b. Criterion Two—Need for Assistance: Through project evaluations, ANA has determined that there are several factors in this criterion that are critical to project management, monitoring, and success. Therefore, in the FY 2008 PA this criterion is categorized into five subcriteria with weighted scores and includes expanded instructions to encourage applicants to more fully describe each of the critical factors. Furthermore, ANA is adding a request for a statement of need and a project goal. ANA anticipates that these inclusions will result in better defined project scopes and objectives. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The New FY 2008 PA Text for the Objectives and Need for Assistance criterion will be:

Need for Assistance: This criterion will be evaluated to the extent the applicant describes the community to be served by the project, identifies the community goal(s), defines the need, describes community involvement and relates the project goal to the community goal(s).

- Identification of Community (2 points): Provide appropriate background information on the community to be served, including geographic location of the project, where the project will be administered and a description of the community to be served by the project. A description of the community can include, but is not limited to, the following: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) a geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or Tribe.

Applicants from national and regional Native organizations must describe their organizational membership. Explain how the organization serves and impacts Native communities.

- Community Goals (2 points): Provide information on the community's long-range goals. Information can include, but is not limited to, materials such as excerpts from a community strategic plan or the mission statement of a non-profit organization.
- Statement of Need (3 points): A statement of need is a clear, concise and precise description of the nature, scope and severity of a problem. Create a statement of need that identifies the specific physical, economic, social, financial, governmental, institutional, language or cultural challenges of the applicant to be addressed by the proposed project.
- Community Involvement (6 points): Describe in detail how the community to be served was involved in the planning process and the origins of the project idea. Describe the community participation in writing the project proposal. Demonstrate and document community and/or Tribal government support for the project. Discuss the relationship of any non-ANA-funded activities supportive of the project. Documented support is a critical element of this evaluation criterion and includes, but is not limited to, materials such as letters of support, testimonials and community meeting minutes.
- Project Goal (5 points): Introduce the project goal and briefly state the project objective(s). The project goal is the specific result or purpose expected to be accomplished over the entire project period. The project goal should directly relate to the statement of need and an identified community goal.

c. Criterion Three—Project Approach: The FY 2008 PA criterion is organized into four subcriteria with respective weighted scores to identify critical factors in project implementation, management, monitoring, and leading to overall project success. The OWP instructions will be clearly separate from the project strategy. Descriptions for both contingency plans and sustainability plans will be expanded. ANA will limit the number of objectives to a maximum of three per project period. Finally, as a result of project monitoring and evaluation reviews, ANA is limiting the number of objectives for each project to three. This change will allow applicants to focus on the activities that are necessary to meet the project goal and objectives. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The Criterion Three text in the FY 2008 PA will be:

Project Approach: This criterion will be evaluated to the extent the applicant includes a narrative that addresses the project strategy, the challenges and contingency plan, the sustainability plan, and the ANA OWP form.

- Project Strategy (10 points): Present a narrative on the project strategy and implementation plan for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals.

(**Note:** For SEDS projects only) If relevant to the project, applicants must provide a Business Plan as an attachment.

Project Challenges and Contingency Planning (5 points): Based on ANA's project funding history and information gathered from project impact evaluations, ANA has determined that all projects encounter challenges and therefore need to have a contingency plan should a significant challenge arise. Challenges can arise because applicants make assumptions about critical events, conditions and/or decisions outside of the control of project management. The applicant needs to identify challenges that may arise during the project's initial start-up and throughout the project period. Consider such challenges as difficulty hiring and retaining key staff, difficulty recruiting community members and/or volunteers for project activities, difficulty recruiting target audience

(e.g., students, children, elders), difficulty securing agreed upon support from partners to provide services/funding, planning shortfalls, possible disruption of the project timeline due to Tribal elections and difficulty securing permits or licensing from government entities. Identify potential challenges and explain the contingency plan that will be implemented to overcome those challenges. The contingency plan should ensure that the project will be successfully completed within the proposed funded timeframe.

• Sustainability Plan (5 points): Establish whether the project will be completed, self-sustaining, or funded by other than ANA funds at the end of the project period. If the project is to be completed, explain why the project does not need to continue. For projects that are expected to continue after ANA funding has expired, present the vision showing how this project will be sustained. For example, explain how a self-sustaining project will generate sufficient funds to continue.

• Objective Work Plan (20 points): The ANA OWP form is the blueprint for the project. The OWP provides detailed descriptions of the project goal, the project objectives, supporting activities and the results and benefits to be expected. It provides the what, how, when, where, and by whom of the project. As such, it is a stand alone document that should provide sufficient information for an application reviewer, ANA staff or a project manager to understand the project and how it will be implemented. The OWP is the basis for reporting on the project.

A project cannot exceed three objectives per project period. Complete an ANA OWP form for each objective per budget period. Some objectives will require more than one form, especially if submitting an electronic application. In addition, some objectives may last more than one budget period. Ensure the objective is correctly stated in the OWP, the project narrative and on the ANA Abstract form.

The objective statement should contain the following basic elements: what will be accomplished during the project period and when it will be accomplished. Each objective should be Specific, Measurable, Achievable, Results-oriented and Time-bound (SMART).

For each objective, list activities that provide a road map to achieve the objective. Each activity is a step in the logical progression of the project. Include specific and significant activities (e.g., hiring staff, developing first draft), ongoing activities (e.g., meetings and classes), the submission of required ANA reports and attendance at ANA post-award training. Especially useful are activities that show progress and/or results on a quarterly basis. Explain how the activities outlined in the OWP will lead to the successful achievement of the project objectives and goal.

Identify the position responsible for the completion of each activity by identifying the title(s) of the salaried project staff person(s). Identify time periods that are realistic to complete each activity. Use elapsed times from the start of the project (e.g., month 1, month 2) rather than absolute dates. September 30 is the start date for each budget period. Identify the non-salary personnel hours, including non-salaried contributors (paid or in-kind) to the project. List hours according to who is providing them (e.g., Committee person—10 hours; ABC Consultant—5 hours): Provide supporting documentation for the hours listed in this column. If applying on *www.grants.gov,* be aware that each objective is limited to eight activities on the OWP form. Furthermore, each section has a limitation on the number of characters (i.e., 180) that are allowed.

The results and benefits section of the OWP is used to track the progress of accomplishing an individual objective. The results and benefits must directly relate to the activities that support the accomplishment of an objective in the OWP. The results and benefits are used to monitor the project's quarterly progress and must include target numbers. The criteria for evaluating the results and benefits expected are of the applicant's choosing and need to be documented and verifiable.

d. Criterion Four—Organizational Capacity: The FY 2008 PA criterion will be organized into two subcriteria with weighted scores and expanded instructions to identify factors related to organizational capacity (management structure, administrative structure and financial competence) and project staffing, which are critical to project success. Additional information on the staffing pattern will ensure applicants consider the time to hire, qualifications needed and requisite staff responsibilities. ANA has determined that difficulty achieving target dates for hiring often results in the need for budget modifications and project extensions or results in the inability to meet the project's objectives and goal. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 Criterion Four text will be:

Organizational Capacity: This criterion will be evaluated to the extent the applicant demonstrates their organizational capacity and ability to staff and implement the proposed project.

• Organizational Capacity (12 points): Provide information on the management structure of the applicant such as personnel and financial policies. Describe the administrative structure of the applicant and the systems to track the funding and progress of the project. Demonstrate the applicant's capacity and ability to administer and implement a project of the proposed scope. Include an organizational chart that indicates where the ANA project will fit in the existing administrative structure.

List all sources of Federal funding the applicant currently oversees. Include information on the funding agency, purpose of the funding and amount. Provide the most recent certified signed audit letter for the organization. If the applicant has audit exceptions, these issues should be discussed within this criterion, detailing any steps taken to overcome the exceptions.

Applicants are required to affirm that they will credit ANA and reference the ANA-funded project on any audio, video and/or printed materials developed in whole or in part with ANA funds.

A consortium applicant must identify the consortium membership and describe roles and responsibilities of each member in relation to the proposed project. One member of the consortium must be the recipient of the ANA funds. A consortium applicant must be an eligible entity as defined by this program announcement and the ANA regulations. Include documentation signed by the membership supporting the ANA application. ANA will not fund activities by a consortium of Tribes that duplicate activities for which member Tribes also receive funding from ANA. Include a copy of the consortia legal agreement or memoranda of agreement.

List all of the applicant's partners that will be providing support to the project's implementation. Include information on the current organizational relationship between the applicant and the partner. The experience and expertise of these partners must align with the activities stated in the OWP that they will be supporting. This information should state the nature, amount and conditions under which another agency, organization or individual will support a project funded by ANA.

• Project Staffing Plan (5 points): Provide staffing and position data that

includes a proposed staffing pattern for the project. Describe the process and general timeframe to hire staff (such as advertising or recruiting from within the community). Explain how the current and future staff will manage the proposed project. Full project position descriptions are required to be submitted as an attachment. Brief biographies and/or resumes of identified key positions or individuals will be included as an attachment. Project positions discussed in this section must match the positions identified in the OWP and in the itemized budget.

Note: Applicants are strongly encouraged to give preference to qualified Native Americans, in accordance with applicable laws, in hiring project staff and in contracting services under an approved ANA grant. (In the last statement, ANA is clarifying the suggested hiring preference for Native Americans for ANA-funded projects (42 U.S.C. 2991b–2(c)(6).)

e. Criterion Five—Project Impact/Evaluation: The FY 2008 PA criterion text will focus on impact indicators and remove results and benefits expected. Furthermore, the number of required impact indicators is reduced from five to three and the list of possible impact indicators has been removed. ANA anticipates that these changes and the revised description of impact indicators will result in the selection and tracking of project-specific, applicant-selected impact indicators. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA Criterion text will be:

Project Impact/Evaluation: This criterion will be evaluated to the extent the applicant addresses the relationship between the project goal and the impact indicators.

ANA conducts on-site community impact evaluations during the last quarter of the project period. Impact evaluations provide grantees the opportunity to share, through qualitative and quantitative information, how the project goal and objectives were accomplished and how the identified community was impacted by the ANA-funded project. This information is then submitted in an annual report to Congress.

Impact Indicators (7 points): Impact indicators are measurement descriptions used to verify the achievement of the project goal and are separate and distinct from the results and benefits section of the OWP. ANA uses impact indicators to determine if a grantee has achieved the expected project goal. Impact is defined as the change in physical, economic, social, financial, governmental, institutional, behavioral, language or cultural conditions as a result of the project.

Each applicant must submit three impact indicators. Two of the three project indicators are standard and required across all ANA programs and the third is directly related to the project goal. The required, standard ANA impact indicators are (1) the number of partnerships formed and (2) the amount of leveraged resources (see Definitions). The third required impact indicator is used to track the success of the project in achieving the project goal and is developed by the applicant. Discuss how this impact indicator relates to the project goal. For each impact indicator submitted provide a system to track the indicator and a target number. Explain the rationale used to choose the target number. Impact indicators are tracked throughout the grant and are reported quarterly.

f. Criterion Six—Budget and Budget Justification/Cost Effectiveness: The FY 2008 PA criterion is organized into two subcriteria with weighted scores and expanded instructions. The purpose of assigning weighted scores for both the budget and the budget justification is to provide clarity and to emphasize the importance and need to submit itemized line-item budgets separately from budget justifications. It is ANA's experience that separate documents are essential for review and monitoring of projects. Furthermore, the budget justification and cost effectiveness components have been consolidated to emphasize the relationship between the cost justification and cost reasonableness. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA Criterion text is:

Budget and Budget Justification/Cost Effectiveness: This criterion will be evaluated to the extent the applicant provides information on the Federal funds request, applicant match requirement, and reasonableness of costs. ANA requires applicants to submit an itemized budget for the costs associated with the successful accomplishment of the project objectives and goal. The budget must include estimated costs, a budget justification and information on cost effectiveness.

- Budget (5 points): Submit itemized budgets that list the Federal request and applicant match requirement. An itemized budget must be submitted for each budget period. These budgets should align with each Object Class Category listed under Section B-Budget Categories of the Budget Information-Non Construction Programs on the SF–424A form. These sections are explained in Section II of this program announcement.

The following is important to consider when preparing the budget: Personnel costs should reflect the time needed to hire staff, if key personnel need to be hired and the hiring process is two months, then calculate the salary based on ten months, rather than twelve; include travel expenses for the chief financial officer and project director to attend a regional ANA post-award training; include local travel (e.g., mileage for local meetings) in the Other budget category, not in the Travel budget category.

- Budget Justification/Cost Effectiveness (10 points): Submit justification narratives that support and align with the Federal request and applicant match requirement. The justification should identify how the calculations for each of the line-items were developed and explain how they are important to the project. Include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

Demonstrate cost effectiveness of the budget by explaining why this project and associated costs are an effective use of ANA resources. Indicate how the proposed budget aligns with regional costs and why funding is necessary to resolve the statement of need. Identify source or include documentation of price quotations, where possible.

Identify the source of the required applicant match and provide documentation in the form of letters of commitment (see Definitions).

Submit a copy of the current Indirect Cost Rate Agreement (see Uniform Project Description definitions) in order to charge or otherwise seek credit for indirect costs. The agreement must have all costs broken down by category so ANA reviewers can be certain that no budgeted line-items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in the grant award.

- (**Note:** For SEDS projects only) For business development projects, demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period. If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or

eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income (see 45 CFR Part 74 and Part 92).

II. ANA FY 2008 Program Specific Changes. ANA FY 2008 PAs for the Native Language Program, NAHMI, SEDS, and Mitigation include changes specific to those programs. Changes are found throughout the PA and are identified below for each specific program.

(A) ANA Native Language: Changes to the Native Languages program area description, definitions, and priority area descriptions reflect the addition of Category IV: Native Language Immersion Projects to include the Esther Martinez Native American Languages Preservation Act of 2006 (Pub. L. 109–394). Each one of ANA's language categories builds on the other. Language Category IV is the logical next step in the process of cultural preservation through the implementation of language immersion programs. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

i. Executive Summary

The FY 2008 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2008 funds for new community-based activities under ANA's Native Language Preservation and Maintenance program area. Financial assistance is provided using a competitive process in accordance with the Native American Programs Act of 1974, and the Esther Martinez Native American Languages Preservation Act of 2006. ANA provides financial assistance to eligible applicants for the purpose of assisting Native Americans in assuring the survival and continuing vitality of their languages. Grants are provided under the following four categories: Category I—Native Language Assessment grants are used to conduct the assessment needed to identify the current status of the Native American language(s) to be addressed; Category II—Native Language Project Planning grants are used to plan a language project; Category III—Native Language Project Implementation grants are used to implement a preservation language project that will contribute to the achievement of the community's long-range language goal(s); and Category IV—Native Language Immersion Project grants are only used for immersion projects with language nests and language survival schools in accordance with Public Law 109–394.

ii. Funding Opportunity Description

The Following Statements will be added in the FY 2008 PA:

(To Legislative Authority) Esther Martinez Native American Languages Preservation Act of 2006, Public Law 109–394.

(To Funding Opportunity Description, after the first paragraph) In 2006, Congress passed the Esther Martinez Native American Language Preservation Act of 2006, Public Law 109–394. The law amends the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs, and for other purposes.

(To Funding Opportunity Description, last sentence) For Category IV projects, applicants must abide by the parameters established by Public Law 109–394.

iii. The FY 2008 PA Will Be Amended to include the following statement prior to the Category One description:

Please note that this announcement is divided into four priority areas. The first priority area is Category I—Native Language Assessment; the second priority area is Category II—Native Language Project Planning; the third priority area is Category III—Native Language Project Implementation; and the fourth priority area is Category IV—Native Language Immersion Project. Information on each priority area immediately follows Section VIII of the preceding program area. The Standard Form (SF) 424 and ANA Project Abstract form must clearly indicate the correct priority area category (I, II, III or IV). An applicant cannot apply for more than one category.

iv. ANA added definitions in order to clarify Category IV.

The FY 2008 Native Language PA includes these definitions:

Language Nests as defined by Public Law 109–394: Site-based educational programs that provide Native language instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student, provide classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents) and ensure that a Native American language is the dominant medium of instruction in the Native American language nest.

Language Survival Schools as defined by Public Law. 109–394: Site-based educational programs for school age students that provide an average of at least 500 hours of Native language instruction through the use of 1 or more Native American language for at least 15 students for whom a Native American language survival school is their principal place of instruction, develop instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages, provide for teacher training, work toward a goal of all students achieving fluency in a Native American language and academic proficiency in mathematics, reading (or language arts) and science and are located in areas that have high numbers or percentages of Native American students.

v. The Descriptions for Native Language Categories I, II and III will be revised and Category IV will be added.

a. Category I—Native Language Assessment

The FY 2008 PA Category I program area of interest will be:

A project that compiles, collects and organizes Native language data in order to have a current description of the community's language status obtained through a ''formal'' method (*e.g.*, work performed by a linguist and/or a language survey conducted by community members) or an ''informal method'' (*e.g.*, a community consensus of the language status based on elders, Tribal scholars, and/or other community members).

b. Category II—Native Language Project Planning

The FY 2008 PA Category II description will be:

The purpose of a Category II—Native Language Planning Project is to encourage Tribes and Native organizations to plan and design Native language projects. Applicants are encouraged to develop a project that results in a comprehensive plan to preserve the Native language that uses current community language assessment data, reviews innovative methods that bring older and younger Native Americans together to teach and learn the language, and considers all essential elements needed to sustain and implement a language project. Category II—Planning Projects are for planning and design only and do not include activities that call for direct language learning or instruction. Program areas of interest include:

- Projects to plan and design Master/Apprentice programs;
- Projects to plan and design a comprehensive Native language

immersion programs for a language nest or survival school;

• Projects that plan, design, and test curriculum for students, parents and language instructors;

• Projects that plan and design teaching materials;

• Projects that plan and design multi-media language learning tools;

• Projects that plan and design a teacher certification program.

c. Category III—Native Language Project Implementation

The FY 2008 Category III description will be:

The purpose of Category III grants is to provide support to Tribes and Native organizations in the implementation of a Native language project to achieve the community's long-range language goal(s). Program areas of interest under Category III include:

• Projects to produce and disseminate culturally relevant printed stories for children, on mental and physical disabilities, using the Native language of the community;

• Projects to facilitate and encourage inter-generational teaching of Native American language skills;

• Projects to train teachers, interpreters or translators of Native languages;

• Projects to disseminate culturally relevant materials to be used to teach and enhance the use of Native American languages;

• Projects to implement an immersion, mentor or distance learning model;

• Projects to produce, distribute or participate in television, radio or other media forms to broadcast Native languages;

• Projects to compile, transcribe and perform analysis of oral testimony;

• Projects to implement an educational site-based immersion project.

d. Category IV—Native Language Immersion Projects.

The FY 2008 Category IV description will be:

The purpose of Category IV grants is to fund Native American Language Immersion projects. The only program areas of interest funded under this priority area are immersion projects for language nests or for language survival schools.

The program area of interest for a Category IV language nest project as defined by statute are site-based educational programs that—

○ Provide Native language instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student, provide classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents) and ensure that a Native American language is the dominant medium of instruction in the Native American language nest.

The program area of interest for a Category IV language survival school as defined by statute are site-based educational programs for school-age students that—

○ Provide an average of at least 500 hours of Native language instruction through the use of 1 or more Native American language for at least 15 students for whom a Native American language survival school is their principal place of instruction, develop instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages, provide for teacher training, work toward a goal of all students achieving fluency in a Native American language and academic proficiency in mathematics, reading (or language arts) and science and are located in areas that have high numbers or percentages of Native American students.

vi. Evaluation Criteria

In addition to the newly developed evaluation criteria presented in Part I. C., additional information requests for the Native Language program have been added. The additional information reflects the priority area-specific information that is necessary for project review and administration. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

a. Category I—Native Language Assessment

The FY 2008 PA Will Include the following statement in Criterion Two—Need for Assistance, Identification of Community:

Describe the known status of the Native American language(s) in the community. Indicate how many known speakers of the language(s) are in the community.

b. Category II—Native Language Planning

The FY 2008 PA will include the following in criterion two—need for assistance, identification of community:

Describe the current status of the Native American language to be addressed in this planning project. Current status is defined as data compiled within the previous 36 months. The description of the current status minimally includes the following information: Age, gender and number of speakers; level(s) of fluency; number of first language speakers, number of second language speakers, and level of fluency; where Native language is used, e.g., home, court system, religious ceremonies, church, media, school, governance and cultural activities; rate of language loss or gain; and the source of data (formal and/or informal).

Fully describe existing community language programs and projects, if any, in support of the Native American language to be addressed by the ANA project. If the applicant has never had a language program, include a detailed explanation of what barriers or circumstances prevented the establishment of a community language program.

c. Category III—Native Language Implementation

The FY 2008 PA will include the following in Criterion Two—Need for Assistance, Identification of Community:

Describe the current status of the Native American language to be addressed in this project. Current status is defined as data compiled within the previous 36 months. The description of the current status minimally includes the following information: Age, gender and number of speakers; level(s) of fluency; number of first language speakers, number of second language speakers, and level of fluency; where Native language is used, e.g., home, court system, religious ceremonies, church, media, school, governance and cultural activities; rate of language loss or gain; and the source of data (formal and/or informal).

Describe existing community language programs and projects, if any, in support of the Native American language to be addressed by the ANA project. If the applicant has never had a language program, include a detailed explanation of what barriers or circumstances prevented the establishment of a community language program.

The FY 2008 PA will include the following in Criterion Three—Approach, Project Strategy:

Include a brief description of how the project will determine effective language growth has occurred in the community.

Describe how the project's methodology, research data, outcomes, or other products can be shared and modified for use by other Tribes or Native communities. If this is not feasible or is culturally inappropriate, provide the reasons. The goal is to provide opportunities to ensure the

survival and continuing vitality of Native languages.

Describe how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations. Native language projects that produce audio or print media will now include a stipulation that a copy of the products will be provided to ANA for the Language Repository. Federally recognized Tribes are exempt from this stipulation and may choose not to submit project products.

d. Category IV—Language Immersion Projects

The FY 2008 PA will include the following in Criterion Two—Need for Assistance, Identification of Community:

Describe the current status of the Native American language to be addressed in this project. Current status is defined as data compiled within the previous 36 months.

The FY 2008 PA will include the following in Criterion Three—Approach, Project Strategy:

Fully describe the existing Native language program(s), and include the following: (1) The program goals; (2) the number of program participants; (3) the number of speakers; (4) the age range of participants (*e.g.*, 0–5, 6–10, 11–18); (5) the number of language teachers; (6) the criteria used to acknowledge competency of language teachers; (7) the resources available to the applicant (*e.g.*, valid grammars, dictionaries and orthographies) or describe other suitable resources; and (8) the program achievements.

The FY 2008 PA will include the following in Criterion Four—Organizational Capacity, Organizational Capacity:

For language nest projects, the applicant shall provide information on the capacity of the organization to provide instruction and child care for at least 10 children under the age of 7 for an average of at least 500 hours per year per student. The applicant shall also provide information on the capacity of the applicant to provide classes to the parents of the students in the language nest.

For a language survival school project, the applicant shall provide information on the capacity of the organization to provide an average of at least 500 hours of instruction through the use of 1 or more Native American languages for at least 15 students. Information must include a certification by the applicant that the applicant has not less than 3 years of experience in operating and administering a Native American language survival school, a Native American language nest or any other educational program in which instruction is conducted in a Native American language. Certification should include at least 3 years of accreditation by the State or Tribe to teach the Native American language to the relevant age group.

Funding Thresholds: The new FY 2008 priority area will revise the funding thresholds for each language category, which reflects ANA availability for funds in this program area. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

Project Periods: The new FY 2008 Native Language categories will have specific project periods. Category I will be a 12-month project period; Category II will be a 12-or 24-month project period; Category III will be a 12-, 24-, or 36-month project; and Category IV will be 36-month-only project period. These project periods allow ANA to fund the greatest number of projects while still allowing ample time for projects in each category to be completed. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

vii. Forms, Assurances, and Certifications.

The additional certification requirement was added to comply with the Esther Martinez Native American Languages Preservation Act of 2006. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

The FY 2008 PA Category IV—Language Immersion will include an additional requirement:

For applicants applying as a Category IV Native American language survival school, submit the following certification:

- A certification that the applicant has operated and administered a Native American language survival school, a Native American language nest, or any other educational program in which instruction is conducted in a Native American language for at least 3 years. Certification may include accreditation from the applicant's State and/or Tribe.

(B) ANA NAHMI: The FY 2008 PA includes two priority areas, specifically Category I—NAHMI Project Planning and Category II—NAHMI Project Implementation. The division of the NAHMI program area into two priority areas will make developing project proposals more feasible for applicants and executing projects more manageable for grantees. It also will lead to reduced project periods, thus reducing the challenges of long-term budget requirements and grant administration. ANA anticipates that these changes will increase applications under this program area.

Category II includes additional program areas of interest, specifically projects that target fathers and absentee parents. These areas of interest were included because they have a direct impact on child welfare. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. Executive Summary

a. In the First Paragraph the FY 2008 PA will state:

* * * funds for projects that plan for and implement approaches to improve * * * and strengthening families (including absentee parent activities) in Native American communities.

b. The FY 2008 PA Text, Beginning with the third paragraph which focuses on NAHMI, will be:

The Native American Healthy Marriage Initiative (NAHMI) is a component of the ACF HMI (Healthy Marriage Initiative) and specifically promotes planning and implementing culturally competent strategies for fostering healthy marriages, responsible fatherhood and child well-being to strengthen families within the Native American Community.

ANA believes a focused strategy is needed to support the Native American Community because of the unique experiences of the Native American population, and there is a clear link between healthy marriage and child well-being. The NAHMI-focused strategy includes three components: (1) Education and Communication; (2) the Creation and Enhancement of Collaborations and Partnerships; and (3) Identifying Resources.

The goal of NAHMI is to increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships, including skills that can help them eventually form and sustain a healthy marriage; increase the percentage of couples who are equipped with the skills and knowledge necessary to form and sustain healthy marriages; increase the percentage of Native American children who are raised by two parents in a healthy marriage environment that is also free of domestic violence; increase the percentage of involvement by absentee

parents in the lives of their children; increase public awareness in Native American communities about the value of healthy marriages and responsible fatherhood; and encourage and support research on Native American healthy marriages and healthy marriage education.

ii. Funding Opportunity Description

The FY 2008 PA will be:

This program area seeks to fund projects that engage in the planning and implementation of approaches to remove barriers to forming lasting families and healthy marriages in Native communities. The announcement is divided into two priority areas. The first priority area is Category I—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Planning. Projects funded under Category I of this announcement will include activities that design and engage in a community-based planning process that identifies barriers to forming healthy marriages (including Traditional Native American marriages); assesses the needs and interest of the community to participate in a NAHMI project; assesses existing absentee parenting programs; identifies strategies to implement a NAHMI project and develops projects that are designed to reduce or eliminate the challenges and barriers identified by the community. The second priority area is Category II—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Implementation. Projects funded under Category II of this announcement will include activities that provide community resources such as marriage education/enrichment training; pre-marital education; relationship skills education on communication, conflict resolution, and commitment; and other support activities such as family outings, family strengthening groups, and weekend pre-marital/marital education retreats.

iii. The FY 2008 PA will be amended to include the following statement prior to the priority one description:

Please note that this announcement is divided into two priority areas. The first priority area is Category I—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Planning and the second priority area is Category II—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Implementation. The second priority information immediately follows Section VIII of priority area one. Applicants may submit under either Priority Area I or Priority Area II but not both priority areas. The Standard Form (SF) 424 and ANA Project Abstract form must clearly indicate the correct priority area.

iv. Definitions. The definition for Domestic Violence Protocol (DVP) will be added and the definition for logic model will be removed. These changes correspond to changes in the evaluation criteria. A DVP is required to be developed in Category I and is required for Category II. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA will include one new definition:

Domestic Violence Protocol: A protocol that describes how you will respond to domestic violence issues. Key components of a domestic violence protocol include key project partners, program description, mission of the healthy marriage project, scope and purpose of protocol, underlying principles and shared values, list of domestic violence shelters, definition of domestic violence, screening and assessment procedures, responding to disclosure of abuse procedures, confidentiality, training, and evaluation of protocol. For more information, please visit the ANA Web site at *http://www.acf.hhs.gov/programs/ana/programs/NAHMI/NAHMI_domestic_violence.html.*

v. The FY 2008 PA will include two priority areas, Category I—Project Planning and Category II—Project Implementation. Communities have requested additional time to plan and develop community partners for comprehensive healthy marriage and fatherhood projects. Therefore, ANA has created two priority areas; planning and implementation, to allow communities the opportunity to apply for shorter project periods and to focus on planning activities that will ensure successful future NAHMI projects. The FY 2008 PA for Category II revises the number of required program areas of interest from three to at least one. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

a. The FY 2008 PA will include the following priority area 1 description:

Priority Area 1: Category I—Improving the Well-Being of Children/Native American Healthy Marriage Initiative Project Planning

Description

The purpose of a Category I planning project is to engage in a community-based planning process that assesses the current status of available resources and barriers to marriage and child well-being within an established Native community. Applicants are encouraged to develop a project that results in a comprehensive NAHMI plan that includes a community assessment of the challenges and barriers that negatively impact marriages, parenting, child well-being, and families within Native American communities; identifies resources and partnerships; and develops a strategy to help sustain healthy marriages and responsible fatherhood within Native American communities. Category I—Project Planning is for planning and design only. Program areas of interest include:

- Projects that develop a plan to provide youth education in high schools, youth organizations, and community centers on the value of healthy marriages and responsible fatherhood. This can include education on relationship conflict resolution, communication, and commitment, as long as it is done in the context of promoting healthy marriage. Projects should use a pre-marital education or responsible fatherhood curriculum focused on youth.
- Projects that develop a plan to offer marriage education and marriage skills, that may include communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.
- Projects that develop a plan to offer pre-marital education and marriage skills training for couples, individuals, or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (e.g. communication, conflict resolution, commitment) necessary to choose marriage for themselves, if they so desire.
- Projects that develop a plan to offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement, and also promote the value and importance of healthy marriages and families.
- Projects that develop a plan to offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.
- Projects that develop a plan to provide marriage enhancement/enrichment and marriage skills training

programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.

• Projects that develop a plan to use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.

• Projects that develop a plan to conduct research on the benefits of healthy marriages and healthy marriage education.

• Projects that develop a plan to provide public advertising campaigns in Native American communities on the value of healthy marriage, parental involvement, and responsible fatherhood as a way to improve marriages and strengthen family relationships.

b. The FY 2008 PA will include the following priority area 2 description:

Priority Area 2: Improving the Well-Being of Children/Native American Healthy Marriage Initiative—Project Implementation

Description

The purpose of a Category II—NAHMI Project Implementation is to support a community-based project focused on healthy marriage and families. Other activities such as relationship skills, responsible parenting, abstinence education, and foster parenting can be included in the project but must not be the primary objective and must be in the context of supporting healthy marriage and responsible fatherhood. The primary objective of these projects is pre-marital education or marriage education for youth, adults, and couples. Eligibility for funding is restricted to projects of the type listed in this program announcement. Applicants should choose one or more program areas of interest from the list below:

• Projects that provide youth education in high schools, youth organizations and community centers on the value of healthy marriages and responsible fatherhood. This can include education on healthy relationship skills including conflict resolution, communication, and commitment, as long as it is done in the context of promoting healthy marriage. Projects should use a pre-marital education or responsible fatherhood curriculum focused on youth.

• Projects that offer marriage education and marriage skills, that may include relationship skills, communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.

• Projects that offer pre-marital education and marriage skills training for couples, individuals or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (e.g. communication, conflict resolution, commitment) necessary to choose marriage for themselves if they so desire.

• Projects that offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement, and also promote the value and importance of healthy marriages and families.

• Projects that offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.

• Projects that provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.

• Projects that use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.

• Projects that conduct research on the benefits of healthy marriages and healthy marriage education.

• Projects that provide public advertising campaigns in Native American communities on the value of healthy marriage, parental involvement, and responsible fatherhood as a way to improve marriages and strengthen family relationships.

vi. Evaluation Criteria: In addition to the newly developed evaluation criteria presented in Part I. C. of this document, the FY 2008 NAHMI will remove the request for a logic model and revise the requirement for the Domestic Violence Protocol. The request for the logic model was removed to standardize the program announcements across all program areas. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

a. The FY 2008 PA Priority Area One (Project Planning) will include an activity to plan and design the Domestic Violence Protocol under Criterion Three—Project Approach, Objective Work Plan. The text will read:

Include an activity to plan and design the Domestic Violence Protocol (see Definitions) the proposed project will use to identify and provide appropriate referral or services for individuals or couples where violence is occurring.

b. The FY 2008 PA Priority Area Two (Project Implementation) Will Include the Following Requirement Under Criterion Three—Project Approach, Project Strategy. The text will read:

Applicants are required to discuss the Domestic Violence Protocol (see Definitions) the proposed project will use to identify and provide appropriate referral or services for individuals or couples where violence is occurring. Applicants should be able to demonstrate knowledge of the information and services provided by domestic violence coalitions within the community.

vii. Funding Thresholds.

The funding thresholds for this program will be revised to reflect ANA's availability of funds within this special initiative program area. These thresholds allow ANA to provide funding to the maximum number of applicants. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

viii. Project Periods.

The project periods reflect the review and assessment of projects monitored under this special initiative program area. These project periods allow ANA to provide funding to the maximum number of applicants. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

In the FY 08 PA, project periods will be:

• Priority Area 1—Planning: 12 months.

• Priority Area 2—Implementation: 36 months.

(C) ANA SEDS: In the FY 2008 PA for both priority areas, the program areas of

interest (PAI) for social development projects changed. The Administration for Children and Families has expanded the focus of healthy marriage to include responsible fatherhood activities. In order to eliminate redundancy, this activity was added to the NAHMI PA. The grandparents PAI was included to promote inter-generational programs. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The FY 2008 PA Will replace the fatherhood PAI with the following:

• Projects that address the needs of grandparents raising grandchildren.

(D) ANA Mitigation: The FY 2008 PA removes all definitions related to in-kind contributions, including in-kind contributions, leveraged resources, partnerships, and letters of commitment. Furthermore, the required number of impact indicators is reduced to one. These changes are reflective of Public Law 103–335 which does not require matching funds. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 103–335.)

Dated: March 21, 2008.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. E8–7238 Filed 4–8–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cell Death and Neurodegeneration.

Date: April 17, 2008.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Kidney Monitoring and Therapeutics Small Business Applications.

Date: April 18, 2008.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7390 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 13–14, 2008.

Closed: May 13, 2008, 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 14, 2008, 8:30 a.m. to 1 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7250 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Development of Practical Training Materials for Evidence-Based Treatment (SBIR Topic 089).

Date: April 23, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kristen V Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard Bethesda, MD 20892–8401, 301–435–1433, *huntleyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7251 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Anesthetic-Induced Cardiac Pre-conditioning.

Date: April 24, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Margaret Weidman, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3ANI8B, Bethesda, MD 20892, 301–594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7253 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging, and Bioengineering NACBIB May.

Date: May 16, 2008.

Open: 9 a.m. to 1 p.m.

Agenda: Report from the Institute Director, other, Institute staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director National Institute of Biomedical Imaging, and Bioengineering, 6701 Democracy Blvd., Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Centers home page: *http://www.nibibl.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7254 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel Review LRP Meeting Applications, Meeting 1.

Date: May 1–2, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Virtual Meeting)

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *qvos@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7256 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Extinction and Pharmacotherapeutics.

Date: May 19, 2008.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301.435.1388, *rliu@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: June 4–5, 2008.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Jury's Washington Hotel, 1500 New Hampshire Ave., Washington, DC 20036.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7257 Filed 4–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876 (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710/800–882–7272 (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E8–7429 Filed 4–8–08; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

[Docket No. FLETC–2008–0001]

Advisory Committee to the Office of State and Local Training

AGENCY: Federal Law Enforcement Training Center (FLETC), DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Office of State and Local Training Advisory Committee (OSLTAC) will meet on April 17, 2008, on Jekyll Island, GA. The meeting will be open to the public.

DATES: The Office of State and Local Training Advisory Committee will meet Thursday, April 17, 2008, from 8 a.m. to 4 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Jekyll Island Club Hotel, 371 Riverview Drive, Jekyll Island, GA. Send written material, comments, and/or requests to make an oral presentation to the contact person listed below by April 14th. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by April 14th. Comments must be identified by FLETC–2008–0001 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *reba.fischer@dhs.gov.* Include docket number in the subject line of the message.
- Fax: (912) 267–3531. (Not a toll-free number).
- Mail: Reba Fischer, Designated Federal Officer (DFO), Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Advisory Committee to the Office of State and Local Training, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; (912) 267–2343; *reba.fischer@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the Advisory Committee to the Office of State and Local Training is to advise and make recommendations on matters relating to the selection, development, content and delivery of training services by the OSL/FLETC to its state, local, campus, and tribal law enforcement customers.

Draft Agenda

The draft agenda for this meeting includes briefings to update committee members on OSL and FLETC training initiatives and provide feedback on committee recommendations. Committee members will be asked to provide recommendations on OSL strategic planning; training needs of state, local, campus, and tribal law enforcement officers; validation of training; and training initiatives.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Visitors must pre-register attendance to ensure adequate seating. Please provide your name and telephone number by close of business on April 14, 2008, to Reba Fischer (contact information above).

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 Reba Fischer as soon as possible.

Dated: March 27, 2008.

Seymour A. Jones,

Deputy Assistant Director, Office of State and Local Law Enforcement Training.

[FR Doc. E8–7407 Filed 4–8–08; 8:45 am]

BILLING CODE 4810–32–P

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of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Extension of a Currently Approved Information Collection; Comment Request

Agency Information Collection Activities: Forms I–600/I–600A, Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection Under Review: Forms I–600/I–600A, Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition; OMB Control No. 1615–0028.

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 June 9, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 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 1615–0028 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Forms I–600/I600A. Should USCIS decide to revise these forms 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–600/I–600A.

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:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–600/I–600A. 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. The Form I–600 is used by the U.S. Citizenship and Immigration Services (USCIS) to determine whether an alien is an eligible orphan. Form I–600A is used to streamline the procedure for advance processing of orphan petitions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 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: April 3, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8–7404 Filed 4–8–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–698, Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection Under Review: Form I–698, Application To Adjust Status From Temporary to Permanent Resident; OMB Control No. 1615–0035.

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 June 9, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 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 1615–0035 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–698. Should USCIS decide to revise the Form I–698, 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–698.

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 to Adjust Status from Temporary to Permanent Resident

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–698. 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. The data collected on this form is used by the USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,179 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 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: April 3, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8–7405 Filed 4–8–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–134, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Form I–134, Affidavit of Support; OMB Control No. 1615–0014.

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 June 9, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 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 email add the OMB Control Number 1615–0014 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:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134 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 information collection is necessary to determine if at the time of application into the United States, the applicant is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66,000 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: April 3, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8–7406 Filed 4–8–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–09]

Notice of Proposed Information Collection: Comment Request; Annual Adjustment Factors (AAF) Rent Increase Requirement

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: June 9, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Gail Williamson, Director, Office of Housing Assistance & Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Annual Adjustment Factors (AAF) Rent Increase Requirement.

OMB Control Number, if applicable: 2502–0507, an extension of currently approved collection.

Description of the need for the information and proposed use: Owners of project-based section 8 contracts that utilize the AAF as the method of rent adjustment provide this information which is necessary to determine whether or not the subject properties' rents are to be adjusted and, if so, the amount of the adjustment.

Agency form numbers, if applicable: HUD–92273–S8.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 918. The number of respondents is 4,287, the number of responses is 612, the frequency of response is on occasion, and the burden hour per response is 1.5.

Status of the proposed information collection: This is an extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 3, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–7401 Filed 4–8–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Privacy Act of 1974, As Amended; New System of Records

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act), the Office of Federal Housing Enterprise Oversight (OFHEO) is issuing public notice of its intent to establish a new Privacy Act system of records. The new system is titled Reasonable Accommodation Information System.

The proposed system of records will consist of information used to evaluate and make decisions with respect to requests for reasonable accommodation made by OFHEO employees and applicants for employment, to implement such accommodations and for emergency response purposes, such as providing evacuation assistance. OFHEO seeks comments on the proposed new system of records described in this notice.

DATES: Written comments must be received before May 9, 2008. The proposed new system of records will become effective on May 19, 2008, unless OFHEO receives comments that would result in changes.

ADDRESSES: You may submit your comments on the proposed new Privacy Act system of records, identified by ''Reasonable Accommodation Information System,'' by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/Reasonable Accommodation Information System of Records, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/Reasonable Accommodation Information System of Records, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments may be submitted by e-mail to Alfred M. Pollard, General Counsel at: *RegComments@OFHEO.gov.* Please include ''Reasonable Accommodation Information System of Records'' in the subject line of the message. See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Mark D. Laponsky, Deputy General Counsel, telephone (202) 414–3832 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Instructions: OFHEO seeks public comments on the proposed new system. Comments should include the reference ''Reasonable Accommodation Information System of Records'' as well as your name and other contact information in the body of your comment. OFHEO further requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5″ disk or CD–ROM.

Posting and Public Availability of Comments: All comments received will be posted without change to *http://www.ofheo.gov*, including any personal information provided. Copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3775.

Introduction: This notice informs the public that OFHEO proposes to establish and maintain a new system of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. The proposed new system of records is:

OFHEO–10—Reasonable Accommodation Information System

As required by 5 U.S.C. 552a(r) of the Privacy Act, and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' (February 8, 1996), OFHEO has submitted a report describing the new system of records covered by this notice to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget. The proposed new system of records described above is set forth in its entirety below.

Dated: April 2, 2008.

James B. Lockhart III,

Director.

OFHEO–10

SYSTEM NAME:

Reasonable Accommodation Information System.

SYSTEM LOCATION:

The Reasonable Accommodation Information System is located in the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, and any alternate work site utilized by employees of the Office of Federal

Housing Enterprise Oversight (OFHEO) or individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Reasonable Accommodation Information System covers current and former OFHEO employees and applicants for employment who have requested reasonable accommodations under the Rehabilitation Act of 1973, and employees who have identified the need for assistance in the event of emergencies or evacuation procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Reasonable Accommodation Information System includes requests for reasonable accommodations or assistance in the event of emergencies or evacuation procedures; medical records; notes or records made or compiled during consideration of requests for reasonable accommodations; decisions on requests for reasonable accommodations; records made to implement or track decisions on requests for reasonable accommodations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973 (29 U.S.C. 791); 29 CFR Part 1630; Executive Orders 13163 and 13164; and, Equal Employment Opportunity Commission Policy Guidance on Executive Order 13164.

PURPOSES:

Information in this system will be used when considering, deciding and implementing requests for reasonable accommodation made by OFHEO employees and applicants for employment, and for emergency response purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b) and in addition to the general routine uses identified in the Prefatory Statement of General Routine Uses, 63 FR 9007 (February 23, 1998), it shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. To medical personnel to meet a bona fide medical emergency.

2. To OFHEO employees and others, including persons, consultants, contractors, entities, vendors or suppliers, as necessary to make a decision on a request for accommodation or to implement the decision.

3. To first responders and others as necessary to provide emergency response or evacuation assistance to covered individuals.

4. To appropriate persons, consultants, contractors, entities or others in the event of a breach of data contained in the system, as necessary for the purposes of responding to and remedying such breach.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in both electronic and paper format. Paper records are maintained in file folders. Computer files are maintained on magnetic tape, CD, or other machine readable format.

RETRIEVABILITY:

Records are retrievable by the name of employee or applicant for employment or some other personal identifier.

SAFEGUARDS:

Access is restricted to OFHEO employees who require the information in performing their official duties. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access. Paper records are maintained in locked cabinets.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the National Archives and

SYSTEM MANAGER AND ADDRESS:

EEO Director, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1702. If additional information or assistance is required, contact the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The OFHEO regulation for contesting records procedures appears at 12 CFR part 1702. If additional information or assistance is required, contact the Privacy Act Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided directly by the individual who is the subject of the record and official OFHEO personnel or authorized representatives.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–7414 Filed 4–8–08; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application of Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received by May 9, 2008.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Fisheries—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered

Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicants: Bureau of Land Management, Kanab Field Office, Kanab, Utah, TE–057401; and Colorado Division of Wildlife, Region 5, Durango, Colorado, TE–067482.

The applicants request a renewed permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicants: Virginia Polytechnic Institute, Fisheries and Wildlife, Blacksburg, Virginia, TE–103272; and, Tern and Plover Conservation Partnership, University of Nebraska, Lincoln, Nebraska, TE–070027.

The applicants request a renewed permit to take Interior least terns (*Sternula antillarum*) and piping plovers (*Charadrius melodus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicants: Wyoming Game and Fish Department, Cheyenne, Wyoming, TE–067397; National Park Service, Badlands National Park, Interior, South Dakota, TE–067734; Cheyenne River Sioux Tribe, Prairie Management Program, Eagle Butte, South Dakota, TE–069539; and, U.S. Forest Service, Buffalo Gap National Grasslands, Wall, South Dakota, TE–069553.

The applicants request a renewed permit to take black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Montana State University, Western Transportation Institute, Bozeman, Montana, TE–150365.

The applicant requests a renewed permit to take Topeka shiners (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: National Park Service, Capitol Reef National Park, Torrey, Utah, TE–064680.

The applicant requests a renewed permit to take Barneby reed-mustard (*Schoenocrambe barnebyi*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: University of Nebraska, Department of Entomology, Lincoln, Nebraska, TE–121912.

The applicant requests a renewed permit to take Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: March 4, 2008.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E8–7435 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–NWRS–2008–N0061; 1265–0000–10137–S3]

Willapa National Wildlife Refuge, Pacific County, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and associated environmental impact statement; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for the Willapa National Wildlife Refuge (Refuge) located in Pacific County, Washington. An environmental impact statement (EIS) evaluating effects of various CCP alternatives will also be prepared. We provide this notice in compliance with our CCP policy to advise other government agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning and environmental review process. We are also requesting public comments. See **DATES** and **ADDRESSES** for details.

DATES: To ensure consideration, we must receive your written comments by May 16, 2008. We will announce opportunities for public input throughout the planning process.

ADDRESSES: Additional information concerning the Willapa Refuge is available on the following Internet site: *http://www.fws.gov/willapa/WillapaNWR.* Send your comments or requests for more information by any of the following methods.

E-mail: FW1PlanningComments@fws.gov. Please include Willapa Refuge in the subject.

Fax: Attn: Charlie Stenvall, (360) 484–3109.

U.S. Mail: Charlie Stenvall, Project Leader, Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, WA 98624–9707.

FOR FURTHER INFORMATION CONTACT: Charlie Stenvall, Project Leader, phone (360) 484–3482.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Willapa Refuge. This notice complies with our CCP policy and National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*) to advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge, and obtain suggestions and information on the scope of issues to consider during development of the CCP/EIS.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System; consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the basis for developing and prioritizing the management goals, objectives, and potential public uses for each refuge. The planning process is a way for us and the public to evaluate management goals and objectives, and determine the best possible approach for conserving important wildlife habitat, while providing wildlife-dependent recreation opportunities compatible with a refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies;

organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Refuge.

We will prepare the EIS for this project in accordance with the requirements NEPA; NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

During the CCP planning process, many elements will be considered including: wildlife and habitat management and public use opportunities. Public input into the planning process is essential. The CCP for Willapa Refuge will describe desired conditions for the Refuge and how the Service will implement management strategies over the next 15 years. Until the CCP is completed, Refuge management will continue to be guided by official Refuge purposes; Federal legislation regarding management of National Wildlife Refuges; and other legal, regulatory, and policy guidance.

Willapa National Wildlife Refuge

The Willapa Refuge was established as the Willapa Harbor Migratory Bird Refuge by Executive Order No. 7541 signed by President Franklin D. Roosevelt on January 11, 1937. Under Executive Order No. 7721, signed October 8, 1937, the Refuge boundary was enlarged and the name was changed to Willapa National Wildlife Refuge. The Refuge was established to protect migrating and wintering populations of brant, waterfowl, shorebirds, and other migratory birds. The goals of the Refuge, revised in 1997, are to: (1) Protect and restore tideland habitat and associated migratory bird species representative of the native biological diversity of Willapa Bay; (2) preserve and protect unique ecosystems associated with Willapa Bay; (3) manage for the conservation and recovery of threatened and endangered species in their natural ecosystem; and (4) provide opportunities for wildlife and wildland-dependent recreation, education, and research.

Preliminary Issues, Concerns, and Opportunities

The FWS has identified the following preliminary issues, concerns, and opportunities for consideration, additional issues may be identified during public scoping:

Tidal Restoration. Is tidal restoration a desirable action, and if so, which refuge units should be considered? Which units if any should remain under current management practices?

Land Acquisition. Should expansion of the Refuge's boundary be considered, and if so, why, and which properties should be proposed for Refuge expansion?

Recovery of the federally threatened Western Snowy Plover. What management actions should be implemented to better protect the Western Snowy Plover from disturbance and predation, while measures to protect and restore habitat are occurring?

Elk Management. What management actions should be implemented to alleviate threats to rare plants and animals, from elk, on the Leadbetter Unit?

Forest Management. What forest management practices should be implemented to restore forest complexity and biodiversity?

Wildlife-Dependent Recreational Uses. Should the current wildlife-dependent recreational uses on the Refuge be expanded? If so, what opportunities are feasible and compatible with the Refuge's purposes that would satisfy the needs of the public?

As part of the CCP planning process, a full range of alternatives will be developed that address the issues and associated management strategies. The alternatives' environmental effects will be evaluated in the environmental impact statement. Comments we receive will be taken into consideration in developing goals, key issues and management strategies, and draft alternatives. Additional opportunities for public participation will occur throughout the CCP process, which is expected to be completed in early 2010.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Date: April 2, 2008.

Renne R. Lohoefener,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. E8–7452 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0053; 94410–1342–0000–N3–N5]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m. on Tuesday, April 29, and Wednesday, April 30, and from 8 a.m. to 12 p.m. on Thursday, May 1, 2008.

ADDRESSES: The ANS Task Force meeting will take place at the Sheraton North Charleston Hotel, 4770 Goer Drive, North Charleston, SC 29406; (843) 747–1900. You may inspect minutes of the meeting at the office of the Chief, Division of Fish and Wildlife Management and Habitat Restoration, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203, during regular business hours, Monday through Friday. You may also view the minutes on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

FOR FURTHER INFORMATION CONTACT: Darren Benjamin, Branch of Invasive Species, at (703) 358–2018, or by e-mail at *Darren _Benjamin@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces meetings of the ANS Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics the ANS Task Force plans to cover during the meetings include: Gulf and South Atlantic Regional Panel presentations, Regional Panel ANS issues and recommendations, and consideration for approval of state ANS management plans. The agenda and other related meeting information are on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

Dated: March 7, 2008.

Gary Frazer,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. E8–7442 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act, Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on the renewal of OMB 1076–0094, Law and Order on Indian Reservations which concerns marriage and dissolution of marriage in a Court of Indian Offenses. This collection will expire in August 2008.

DATES: Submit comments on or before June 9, 2008.

ADDRESSES: Send comments to Joseph Little, 1001 Indian School Road, Albuquerque, NM 87104. You may contact Mr. Little at 505–563–3833.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Mr. Joseph Little. You may contact Mr. Little at 505–563–3833.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs, Department of the Interior, must collect personal information to carry out the requirements of Title 25, section 11.600(c) Marriage, and Title 25, section 11.606(c) Dissolution of Marriage. Information is collected by the Clerk of the Court of Indian Offenses in order for the Court to issue a marriage license or dissolve a marriage. The information is collected on a one-age application requesting only the basic information necessary for the Court to properly dispose of the matter.

II. Method of Collection

The information is collected on a one-page application for the marriage license or for a dissolution of marriage.

III. Information Collected

Courts of Indian Offenses (CFR Courts) have been established on certain Indian Reservations under the authority vested in the Secretary of the Interior by 5 U.S.C. 301, 25 U.S.C. 2 and 9, and 25 U.S.C. 13 which authorize appropriations for ''Indian judges.'' See *Tillet* v. *Hodel*, 730 F. Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991), *United States* v. *Clapox*, 13 Sawy. 349, 35 F. 575 (D. Ore. 1888). The CFR Courts provide adequate machinery for the administration of justice for Indian tribes in those areas where tribes retain jurisdiction over Indians and that are exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

Accordingly, CFR Courts exercise jurisdiction under part 11 of Title 25 of the Code for Federal Regulations. Domestic relations are governed by 25 CFR 11.600, which authorizes the CFR Court to conduct marriages and dissolve marriages. In order to be married in a CFR Court, a marriage license must be obtained (25 CFR 11.600, 601). To comply with this requirement, an applicant must respond to the following six questions found at 25 CFR 11.600(c):

(c) A marriage license application shall include the following information;

(1) Name, sex, occupation, address, social security number, and date and place of birth for each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship;

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated; and

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

For the purposes of § 11.600, Marriage, information about the Social Security Number is requested to confirm identity. Previous marriage information is requested to avoid multiple simultaneous marriages, and to ensure that any pre-existing legal relationships are dissolved. Information on consanguinity is requested to avoid conflict with state or tribal laws against marriages between parties who are related by blood as defined in such laws. Medical examination information may be requested if required under the laws of the state in which the Court of Indian Offenses is located.

To comply with the requirement for dissolution of marriage, an applicant must respond to the following six questions found at 25 CFR 11.606(c):

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court for each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met an that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

For the purposes of § 11.606, Dissolution proceedings, information on occupation and residency is necessary to establish court jurisdiction. Information on the status of the parties, whether they have lived apart 180 days or if there is serious marital discord warranting dissolution, is necessary for the court to determine if dissolution is proper. Information on the children of the marriage, their ages and whether the wife is pregnant is necessary for the court to determine the appropriate level of support that may be required from the non-custodial parent.

Description of the need for the information and proposed use of the information: The information is submitted in order to obtain or retain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Affected entities: Indian applicants that are under the jurisdiction of one of the 24 established Courts of Indian Offenses.

Estimated number of respondents: Approximately 260 applications for a marriage license or petition for dissolution of marriage will be filed in the 24 Courts of Indian Offenses annually.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting a marriage license or petition for dissolution of marriage is 15 minutes per application. The total annual burden is estimated to be 65 hours.

Estimated cost: There are no costs to consider, except estimated costs of $100. per court annually, for the material, supplies, and staff time required by the Court of Indian Offenses.

IV. Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. The OMB Control Number for this collection is 1076–0094.

Please note that all comments received will be available for public review 2 weeks after comment period closes. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. We do not consider anonymous comments. All comments from representatives of businesses or organizations will be made public in their entirety. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0094.

Type of review: Renewal.

Title: Title 25 CFR 11, Subpart F, Law & Order on Indian Reservations.

Brief Description of collection: This collection is required to obtain a benefit, namely either a marriage license or a dissolution of marriage. Details of information are contained in Section III Information Collected.

Respondents: Persons who reside on land under the jurisdiction of a Court of Indian Offenses.

Number of Respondents: 260.

Estimated Time per Response: 15 minutes.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 65 hours.

Total Annual Cost to Respondents: Negligible.

Dated: March 28, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–7413 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0010]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0119).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The previous title of this information collection request (ICR) was ''30 CFR Part 208—Sale of Federal Royalty Oil; Sale of Federal Royalty Gas; and Commercial Contracts (Forms MMS–4070, Application for the Purchase of Royalty Oil; MMS–4071, Letter of Credit; and MMS–4072, Royalty-in-Kind Contract Surety Bond).'' The new title of this ICR is ''30 CFR Part 208, RIK Oil and Gas.''

DATES: Submit written comments on or before June 9, 2008.

ADDRESSES: You may submit comments by the following methods:

- Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0010'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.
- Mail comments to Armand Southall, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0119 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. Please reference ICR 1010–0119 in your comments.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231–3221, or e-mail *armand.southall@mms.gov.* You may also contact Armand Southall to obtain copies, at no cost, of (1) The ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 208, RIK Oil and Gas.

OMB Control Number: 1010–0119.

Bureau Form Number: Forms MMS–4070, MMS–4071, and MMS–4072.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act of 1920 (30 U.S.C. 1923), the Indian Mineral Development Act of 1982 (25 U.S.C. 2103), and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties and other mineral revenues from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The MMS performs the mineral revenue management functions for the Secretary.

Public laws pertaining to mineral revenues are on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.* These public laws and 30 CFR part 208, as well as specific language in the actual lease documents, authorize the Secretary to sell royalty oil and gas accruing to the United States. The standard lease terms state that royalties are due in amount or in value. In addition, these citations authorize the Secretary to prescribe proper rules and regulations and to do any and all things necessary to accomplish the purpose of applicable laws. The MMS directs communications between MMS operators and RIK purchasers through commercial contracts, situation-specific ''Dear Operator'' letters, or, in the case of eligible refiners, through regulations at 30 CFR part 208.

General Information

The MMS is responsible for ensuring that all revenues from Federal and Indian mineral leases are accurately collected and accounted for and appropriately disbursed to recipients.

Historically, most of these revenues have been received in the form of cash royalty payments, i.e., royalty in-value payments. These payments are paid by mineral development interests. Beginning in the late nineties, MMS conducted pilots to test the approach of taking RIK.

The Federal Government's MMS RIK pilot program became a permanent operational program after several years of pilot project testing. The MMS RIK operational program takes payment from mineral lessees ''in kind'' in the form of produced crude oil and natural gas volumes, rather than in cash payments. The lessee transfers the title of the crude oil or natural gas to the Federal Government, and MMS sells the received product (crude oil or natural gas) to agents in the marketplace and disburses revenues as prescribed by law. The MMS sells some product competitively in the unrestricted marketplace, and the other RIK product MMS sells competitively to eligible refiners (a small and independent refiner, as defined in 30 CFR 208.2). Additionally, when directed, MMS delivers the RIK product to other Federal agencies, as has been the case during the fill of the Strategic Petroleum Reserve (SPR), directed by the President in 2007, with scheduled completion upon reaching a capacity of 727 million barrels. Specifically, within the MMS RIK operational program, MMS conducts the eligible small refiner, SPR, offshore, and Wyoming natural gas programs.

Recently, MMS consolidated and revised existing procedures and policies guiding the sale of onshore and offshore royalty crude oil and natural gas (1) To establish uniformity within the regulatory and operational framework; (2) to provide industry with a more efficient and responsive MMS RIK operational program; and (3) to improve the Federal Government's administration of this program. For example, several of the reporting requirements for eligible refiners under 30 CFR part 208 have been combined with reporting requirements for other RIK purchasers. However, due to the unique nature of the sale of crude oil to eligible refiners, certain requirements pertain only to that eligible refiner program.

Eligible Refiner Information—Determination of Need

As stated earlier, royalties may be paid ''in value'' or ''in kind.'' The regulations at 30 CFR part 208, Sale of Federal Royalty Oil, govern the RIK program of Federal oil for eligible refiners. Under § 208.4(a) and (b), MMS, on behalf of the Secretary, performs a Determination of Need prior to issuing a Notice of Availability of Royalty Oil for sale. The MMS uses the feedback from the Determination of Need respondents (eligible refiners or other interested parties, i.e., lessees, operators) to assess current marketplace conditions. If MMS determines the program should continue, MMS may dispose of any royalty oil taken in kind by conducting a sale of such oil, through an allocation process, to eligible refiners. The most recent Determination of Need assessment, requesting specific information from interested parties, was published in the **Federal Register** on January 16, 2008.

In order to qualify for RIK sales, eligible refiners must prequalify by (1) signing the MMS base contract, ''RIK Crude Oil General Terms and Conditions,'' which is located at *http://www.mrm.mms.gov/rikweb/PDFDocs/gtcexh.pdf,* and (2) providing detailed financial information. Upon prequalification, MMS will issue an amount of unsecured credit, based on the creditability of the offeror.

Notice of Availability of Royalty Oil—Federal Register Notice

Under § 208.5, if MMS finds from the Determination of Need process that the program should continue, MMS would then publish a Notice of Availability of Royalty Oil for sale in the **Federal Register** and other printed media, when appropriate. This notice advises industry of a forthcoming RIK crude oil sale for eligible refiners and includes administrative details concerning the application, the allocation process, and the contract award process for the royalty oil. It also details specific information about the crude oil types offered for sale and the location of delivery points.

Under § 208.10(e), eligible refiners who purchase royalty oil cannot transfer, assign, or sell their rights or interest in a royalty oil contract without written approval of the MMS Director. This provision is intended to ensure that only qualified eligible refiners benefit from these sales of royalty oil.

Form MMS–4070—Application for the Purchase of Royalty Oil

Under § 208.6, eligible refiners interested in purchasing royalty oil must submit Form MMS–4070, which is located at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/4070.pdf.* This form serves as certification that the company qualifies under the Small Refiner Program as defined under § 208.2. On Form MMS–4070, MMS requests specific information, i.e., the location of their refinery; number of persons employed by the refinery; type of crude desired (e.g., Light Louisiana Sweet); the specific area in which the applicant is interested and documentation supporting an established history in the requested area; and the percentage of total refining capacity attributable to Federal oil versus other sources.

The Federal Government's administration of the eligible refiner program is aided significantly by the collection of information requested on Form MMS–4070. The MMS uses the information collected to determine the eligibility of refiners wanting to enter into contracts to purchase royalty oil and to provide a basis for the allocation of available royalty oil among eligible refiners, when necessary; that is, they meet the small refiner eligibility requirements issued by the Small Business Administration, as explained under § 208.6.

Directed Communications by Operators of Federal Oil and Gas Leases

Collection of RIK crude oil and natural gas for eligible refiners and other RIK purchasers requires communication between MMS and the operators of a lease to ensure accurate and timely delivery of MMS's royalty share of production volumes. In order to take MMS's crude oil or natural gas in kind, MMS, as the responsible steward of oil and gas royalties, must direct operators of affected MMS leases to provide three types of communication:

(1) Report information about the projected volumes and qualities of RIK crude oil or natural gas production the operator expects to make available for delivery in the following month, and report corrections to those projected volumes and qualities for previous months, submitted monthly no later than 10 days before the first day of following month;

(2) Report cost/invoicing information about transportation charges incurred for delivering the RIK product to the delivery point, when applicable; and

(3) Report month-end summary information (lease imbalance statement) regarding total RIK crude oil or natural gas volumes and qualities needed to carry over to the next month to resolve aggregated imbalances that have occurred in prior months of RIK deliveries.

In marketing the product, information received through MMS's directed communication is essential for MMS to ensure the delivery and acceptance of verifiable quantities and qualities of crude oil and natural gas. In cases when

MMS is directed to deliver the product to other Federal agencies, these types of directed communication are necessary so that exchange contractors can arrange to timely accept accurate amounts and qualities of royalty oil that will be delivered by MMS's exchange partner and for MMS to verify timely fulfillment of operators' and lessees' royalty obligations to the Federal Government.

The types of directed communication and the supporting data, which MMS requires operators to use in setting up the monthly delivery of RIK to the purchaser, are standard business practices in the oil and gas industry. Sample ''Dear Operator'' letters are posted on RIK's Web site at *http://www.mrm.mms.gov/rikweb/RIKOperLts.htm.*

Third-Party Agreements

Section 208.9 requires that eligible refiners who purchase royalty oil must submit to MMS two copies of any written third-party agreements, or two copies of a complete written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. Also, this section requires that the purchaser must submit copies of agreements pertaining to quality differentials that may occur between the lease(s) and the delivery point(s). However, in practice MMS does not currently require eligible refiners to submit these written third-party and quality differential agreements. The MMS reserves the right upon request to require the agreement from the eligible refiners.

Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas

Offers. The Secretary is obligated to hold competition when selling to the public; to protect actual RIK production before, during, and after any sale; and to obtain a fair return on royalty production sold. The MMS must fulfill those obligations for the Secretary. The reporting requirements are (1) Actual pricing offers that potential purchasers will submit when MMS offers production for competitive sale; (2) offerors' statements of financial qualification (audited financial statements or 10K report/statement); and (3) surety instruments, such as a Letter of Credit (LOC), bond, prepayment, or parent guaranty when financial qualification is not sufficient. All LOCs are irrevocable.

The MMS typically offers royalty oil and gas production for sale by Invitation for Offers (IFOs) to those offerors who have previously established their qualifications. The MMS evaluates all offers to determine which combination of price and other terms comprises the best return to the U.S. Department of the Treasury and to any affected state.

Financial Statements. The MMS may request that a bidder submit its publicly available statements of its financial condition (brought briefly up to date, if needed) or other related qualification information. The MMS evaluates the qualification information to determine whether bidders are reliable to follow through on payment of the dollar amount (or delivery of exchange production) offered, as they bid, and to determine their ability to timely perform activities attendant to the taking of crude oil and/or natural gas. The MMS performs this step to reduce the risk to the Federal Government in these transactions.

Surety Instruments. Under MMS current practice, eligible refiners are subject to the same requirements as other RIK purchasers regarding MMS-acceptable surety instruments and qualification information. Reporting requirements in § 208.11 discuss surety instruments for eligible refiners. Surety instruments include the broad field of financial instruments that may be collected, i.e., bonds, prepayments, and parent guaranties. When required, eligible refiners and other RIK purchasers must provide surety documents, i.e., Form MMS–4071, LOC; Form MMS–4072, Royalty-In-Kind Contract Surety Bond; other acceptable commercial surety, within 5 business days prior to the first delivery under the contract to protect the Federal Government's interest. For bonds, MMS requires a specific MMS-approved format. All parent guaranties must specify a dollar amount of the guaranty and the effective term.

For awards exceeding the amount of unsecured credit issued by MMS, successful offerors will be required to provide secured financial assurance in the form of an LOC, bond, or other MMS-acceptable surety instrument within 5 business days prior to the first delivery under the contract.

In cases of high-risk counterparties, or large awards of RIK crude oil or natural gas, MMS will require a surety instrument to guarantee performance under RIK sales or exchange agreement. Surety instruments are commonly used in the commercial oil and gas industry as a standard course of business where risk is encountered from counterparties.

The surety instruments provide the Federal Government with a means to collect money if refiners do not report and pay for the Federal oil they have received.

The MMS will request OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency of Response: On occasion, weekly, monthly, annually, frequency varies within monthly reporting cycle, or as necessary.

Estimated Number and Description of Respondents: 227 Federal lessees and/or operators; and 80 commercial oil and gas purchasers and/or refiners.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,969 hours.

We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary. The following chart shows the estimated annual burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 208—SALE OF FEDERAL ROYALTY OIL				
Subpart A—General Provisions				
§ 208.4 Royalty oil sales to eligible refiners				
208.4(a)	(a) *Determination to take royalty oil in kind.* The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. * * *	4	4	16
208.4(b)	(b) *Sale to eligible refiners.* (1) * * * The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries. * * *	Hour burden covered under § 208.4(a).		
208.4(c)	(c) Upon a determination by the Secretary * * * that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. * * *	Hour burden covered under § 208.4(a).		
208.4(d)	(d) *Interim sales.* * * * The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. * * *	Hour burden covered under § 208.4(a).		
§ 208.6 General application procedures				
208.6(a) and (b)	(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with instructions provided in the ''Notice of Availability of Royalty Oil'' and in accordance with any instructions issued by MMS for completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS–4070. (b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS–4070 at the time of application: * * *	1.25	4	5
§ 208.7 Determination of eligibility				
208.7(a)	(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. * * *	0.25	1	*1
§ 208.8 Transportation and delivery				
208.8(a)	(a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS.	1	1	1
208.8(b)	(b) * * * If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 206. * * *	Hour burden covered by OMB Control Number 1010–0140. This provision is no different than the transportation allowances allowed in 30 CFR part 206 for royalties paid in value. The lessee enters allowance amount on Form MMS–2014.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	§ 208.9 Agreements			
208.9(a)	(a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.	1	1	1
	§ 208.10 Notices			
208.10(d)	(d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. * * *	2	20	40
208.10(e)	(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. * * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. * * *	1	1	1
	§ 208.11 Surety requirements [for eligible refiners]			
208.11 (a), (b), (d), and (e)	(a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. * * * (b) * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. * * * (d) The "MMS-specified surety instrument" shall be in the form specified by MMS instructions or approved by MMS. * * * (e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.	Hour burden covered under "Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas" section. (Forms MMS–4071, Letter of Credit, and MMS–4072, Royalty-In-Kind Contract Surety Bond)		
	§ 208.15 Audits			
208.15	Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at other such times as may be directed by MMS. * * *	Audit process. See note.		
	Directed Communications by Operators of Federal Oil and Gas Leases			
Contract-Directed	Wyoming Gas	3	3	9
	Natural Gas [Texas 8G and Gulf of Mexico (GOM)]	3	108	324
	GOM Oil	3	64	192
	SPR Fill Initiative	3	17	51
	In January 2008, 70,000 barrels of oil per day were directed toward the SPR. This initiative will continue through the Fall of 2008; at which point, these oil volumes will be redirected back to commercial GOM RIK oil sales. Thus, information collection responses will continue at the same level during and after the SPR initiative, the only difference will be under which program the collection falls.)			
	Eligible Refiners	3	35	105
	Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas			
Contract-Directed	Offers	1	903	903
	Financial Statements	1	20	20
	Surety Instruments	10	30	300

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Total Burden			1,212	1,969

Note: The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.

* Rounded up from 0.25.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our website at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208 7744.

Dated: April 2, 2008.

Walter D. Cruickshank,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E8–7448 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice: Clarifying the Definition Of ''Substantial Restoration of Natural Quiet'' at Grand Canyon National Park, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Public Notice: Clarifying the definition of ''substantial restoration of natural quiet'' at Grand Canyon National Park.

SUMMARY: This notice clarifies the definition used by Grand Canyon National Park (GCNP) for achieving substantial restoration of natural quiet as mandated by the 1987 Overflights Act (Pub. L. 100–91) (Overflights Act). This clarification of the definition is necessary to address current acoustic conditions to comply with the intent of recommendations provided in the 1995 Report to Congress,[1] and respond to a 2002 U.S. Court of Appeals decision. The provisions of the Special Flight Aviation Regulation (SFAR) 50–2 have not resulted in substantial restoration of natural quiet of GCNP. Given the volume of high altitude commercial jet and general aviation traffic overflying the Grand Canyon above 17,999 feet Mean Sea Level (MSL) and a recent court decision, the substantial restoration goal as currently defined cannot be attained. This clarification of the restoration definition, while focusing on air tour and air tour related and general aviation aircraft that are conducting overflights of GCNP at altitudes at or below 17,999 MSL, also incorporates measures to address noise from all aircraft. The 1995 definition of substantial restoration of natural quiet is being clarified to distinguish between aircraft noise generated above and below 17,999 feet MSL. The Special Flight Rules Area (SFRA) ceiling was set at 17,999 MSL to avoid additional requirements, restrictions and

[1] National Park Service, (1995) Report of Effects of Aircraft Overflights on the National Park System, Report to Congress, July 1995.

regulations that occur at or above 18,000 MSL.

GCNP and the Federal Aviation Administration (FAA) are currently engaged in the preparation of an environmental impact statement (EIS) entitled ''Special Flight Rules Area in the Vicinity of Grand Canyon National Park.'' GCNP, in consultation with the FAA, has determined in the noise methodology section of the EIS that aviation noise above 17,999 feet MSL will be considered as a cumulative impact for purposes of the EIS, and aircraft noise generated at or below 17,999 feet MSL, within the Special Flights Rules Area (SFRA) will be managed to attain the NPS recommendations and meet restoration management objectives consistent with GCNP management direction, 2006 NPS Management Policies, and the 1995 Report to Congress.

The NPS proposes the following clarification to the definition of substantial restoration of natural quiet.

(a) Substantial restoration of natural quiet at GCNP will be achieved when the reduction of noise from aircraft operations at or below 17,999 feet MSL results in 50% or more of the park achieving restoration of the natural quiet (i.e., no aircraft audible) for 75% to 100% of the day, each and every day; and

(b) The NPS defines the substantial restoration of natural quiet from all aircraft above 17,999 feet MSL, to mean that there will be an overall reduction in aviation noise generated above 17,999 feet MSL above the park over time through the implementation of measures in accordance with FAA commitments.

The NPS also clarifies that 50% of GCNP is a minimum in the restoration goal. This includes not only the impacts of aircraft noise on the soundscape but the impact of noise on the visitor experience and natural, cultural and historic resources for the entire park. The analysis of noise impacts in the overflights EIS will be based on the defined substantial restoration goal, park values and purposes, and the GCNP General Management Plan land zoning objectives and overall park management objectives.[2] NPS has deferred the assessment of aviation safety to FAA's jurisdiction. Both agencies have agreed to consider the noise from all aircraft in the ongoing ETS and planning process. Further, both agencies have agreed to consider reducing aircraft noise over the park in the future from aircraft operating above 17,999 feet MSL over the SFRA, while removing aircraft operations above 17,999 MSL from direct regulation in this action. This notice seeks public comment on the clarification of the NPS definition of substantial restoration.

DATES: This notice will be on public review for 30 days, May 9, 2008.

ADDRESSES: If you wish to comment, you may mail or hand deliver comments to the name and address below or comment online via *http://parkplanning.nps.gov/grca* (select ''Substantial Restoration Clarification''). Comments must be received within 30 days from the date of this printing. You may also view a copy of this clarification through the Internet at: *http://www.nps.gov/grca/naturescience/soundscape.htm*.

FOR FURTHER INFORMATION CONTACT: Ken McMullen, Overflights and Natural Soundscape Program Manager, Grand Canyon National Park, 823 N. San Francisco St., Suite B, Flagstaff, Arizona 8600l National Park Service, Grand Canyon NP, Telephone: (928) 779–2095.

SUPPLEMENTARY INFORMATION:

Background

This notice is one of several steps being taken by the Secretary of the Interior (SOI), through the NPS, and the FAA to fulfill the mandate established by Congress in PL 100–91, the Overflights Act, to provide for the substantial restoration of natural quiet in Grand Canyon National Park. Section 3 of the Overflights Act mandated the SOI to submit to the Administrator of the FAA recommendations ''regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights.'' The express statutory goal for these recommendations is the ''substantial restoration of natural quiet and experience of the park and protection of public health and safety from adverse affects associated with aircraft overflight.'' The Overflights Act requires the FAA Administrator to adopt the recommendations of the SOI ''without change unless the Administrator determines that implementing the recommendations would adversely affect aviation safety.''

Congress did not define natural quiet or substantial restoration of natural quiet and, instead, delegated the interpretation of the statute to the Secretary. Under well established rules of statutory construction, the agency's interpretation is given deference so long as it is based on a reasonable construction of the statute. The D.C. Circuit Court of Appeals found that the NPS had reasonable justification for its interpretations of natural quiet and substantial restoration of natural quiet, as set forth in the 1995 Report to Congress. (See *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F.3d 455 (D.C. Cir. 1998)).

In its 1995 Report to Congress the policy decision of the NPS was that substantial restoration requires that 50% or more of the park achieve natural quiet (i.e. no aircraft audible) for 75–100% of the day. The NPS provided definitions of terms used, as well as rationale for its noise impact assessment methods in ''Review of Scientific Basis for Change in Noise Impact Assessment Method Used at Grand Canyon National Park,'' 2000.[3] In the review, the NPS defined one parameter of substantial restoration of natural quiet to be ''* * * a threshold not to be exceeded on any given day * * *.'' In 2002, the definition of substantial restoration of natural quiet and the FAA's noise methodology in the 2000 Final Supplemental Environmental Assessment was addressed in litigation before the D.C. Circuit Court of Appeals, in the case *United States Air Tour Association* v. *FAA*, 298 F.3d 997 (D.C. Cir. 2002). In this case, the Court declared that '' * * * the Park Service is entitled to deference for its interpretation of its own definitions.'' The Court concluded ''* * * the FAA's use of an ''average annual day'' for measuring 'substantial restoration of natural quiet' appears inconsistent with both the Park Service's definition of the term and with the premise upon which that definition was based. * * * We must therefore remand this issue for further consideration.'' In response to the court decision, the term ''the day'' was clarified by the NPS in the November 7, 2003 **Federal Register** Notice (68 FR 63129–63130) to mean ''each and every day.''

The D.C. Circuit Court of Appeals also found that the FAA's noise methodology was flawed because it only accounted for noise from commercial air tours, while ignoring noise from other types of aircraft (commercial jets, general aviation, and military flights). The court further stated that the Overflights Act did not provide any basis for ignoring noise caused by such aircraft and in the absence of any reasonable justification for excluding non-tour aircraft from its noise model, the court concluded that this aspect of the FAA's methodology was arbitrary and capricious and required reconsideration by the agency.

Reasons for the Clarification

Based on the 2002 D.C. Circuit Court of Appeals decision, as well as review

[2] National Park Service (1995) General Management Plan for Grand Canyon National Park.

[3] National Park Service, (2000) Review of Scientific Basis For Change in Noise Impact Assessment Method Used at Grand Canyon National Park. January 2000.

of Congressional intent, aircraft noise levels, and national airspace safety and efficiency, this clarification of the restoration definition is necessary to address the noise of all aircraft while distinguishing how the substantial restoration of natural quiet will be achieved at and below 17,999 feet MSL within the Special Flight Rules Area (SFRA) and above the SFRA. The NPS recognizes that due to the impacts of aviation noise on park resources and the visitor experience, even with implementation of quiet technology aircraft, restoration of the natural quiet as defined in the 1995 Report to Congress will not be achieved without reduction of the sounds produced by jet traffic above 17,999.

The 1995 Report to Congress concluded that SFAR 50–2 had not resulted in substantial restoration of natural quiet in Grand Canyon National Park and continued growth in air traffic may diminish or negate progress to date. The report looked at air tour, military, general aviation and high altitude commercial overflights and found that the major aircraft noise impacts on natural quiet came from air tour activity and high flying commercial jet traffic. Low flying general aviation and military overflights were thought to contribute little to the overall aircraft noise impacts. As discussed in the Report to Congress, high altitude jets were known to be a noise issue that the FAA needed to address. In particular it was recommended in the report that (1) FAA not authorize any deviations from normal high altitude routes for sight-seeing purposes; (2) FAA not authorize deviations from normal flight plans and cruising altitudes over the Grand Canyon for other than safety reasons; and (3) that FAA conduct a study on high altitude commercial jet routes that may also have impacts on natural quiet in the park. Consequently, subsequent regulations focused on the regulation of air tour and related operations.

In 2005 and 2006, the GCNP initiated a soundscape monitoring and data collection effort to verify the accuracy of the earlier acoustic science and methodologies used since the early 1980's (see discussion in 64 FR 38006–38007) and to determine the natural ambient conditions for most of the park area. NPS noise modeling results predicted that over 96% of the park area had aircraft noise audible for over 25% of the 12-hour day; however, there were notable differences between air tour aircraft flying at lower altitudes within the SFRA and high altitude (primarily commercial) aircraft flying above the SFRA. Low flying air tour aircraft generated more noise at ground level, but could meet the threshold of the substantial restoration goal. Higher altitude aircraft generated lower levels of noise at ground level, but produced broader areas of audibility. The broader geographic coverage of audibility of high altitude aircraft noise made achieving the NPS percentage goals of substantially restoring natural quiet to the Grand Canyon unattainable from a practical standpoint, no matter how few air tour and general aviation operations occurred within the SFAR and over the park. GCNP noise monitoring results in 2005 supported the model predictions. The time jet aircraft (above 17,999 feet MSL) were audible ranged between 22% and 35% of the day at four sites in remote backcountry locations.[4] These results are similar to those reported by Harris Miller Miller and Hanson, Inc. in 2004 where the average percentages of time high altitude jet traffic were audible was 34.4%.[5]

In 2006, the FAA retained MITRE Corporation CAASD to conduct a study on the feasibility of implementing a flight free zone over the heart of GCNP for flights above 17,999 feet MSL, and adjusting traffic routes that would avoid a large and very important portion of the Grand Canyon. The unpublished study titled ''Impact from Restricting Flights From Grand Canyon Airspace''[6] determined that *''routing of commercial aviation would have a significant impact on the users of the airspace, would add thousands of extra miles and flying minutes to the routes, and safety of the airspace and operation would be negatively impacted through increased complexity and risks.''* From the results of the MITRE study, the FAA determined that a flight free zone for high altitude aircraft over the Grand Canyon would adversely affect the safety and efficiency of the national airspace system.

Based on the data provided through the various NPS studies and the MITRE report, the NPS acknowledges that the definition of substantial restoration of natural quiet needs clarification to distinguish the goals within and above the SFRA, while at the same time considering the noise from all aircraft in order to comply with the Overflights Act and the 2002 D.C. Circuit Court of Appeals decision.

This notice clarifies that through the application of law and policy, the NPS is clarifying that ''(a) Substantial restoration of natural quiet at GCNP is achieved when the reduction of noise from aircraft operations at or below 17,999 feet MSL results in 50% or more of the park achieving restoration of the natural quiet (i.e., no aircraft audible) for 75% to 100% of the day, each and every day; and (b) the NPS defines the substantial restoration of natural quiet, from all aircraft above 17,999 feet MSL, to mean that there will be an overall reduction in aviation noise generated above 17,999 feet MSL above the park over time through the implementation of specific measures in accordance with commitments made by FAA to the NPS. The NPS also clarifies that 50% of the park is a minimum in the restoration goal.

Dated: January 16, 2008.

Hal J. Grovert,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8–7410 Filed 4–8–08; 8:45 am]

BILLING CODE 4312–ED–M

[4] National Park Service (2007) Report on Winter Ambient Sound Levels in Grand Canyon National Park, Report No.GRCA–07–02.

[5] Ross, J., Menge, C., and Miller. N.P. (2004) Percentage of time jet aircraft are audible in Grand Canyon National Park. Harris Miller Miller and Hanson, Inc., For NPS–HMMH Job No. 295860.044).

[6] Abrahamsen, T.R., Marani. G.F., and Bearer, R., (2006) Impact on Restricting Flights From Grand Canyon Airspace. The MITRE Corporation CAASD for the Federal Aviation Administration and National Park Service, Report No. F063–B06–050, Presented to the Grand Canyon Working Group, September 2006.

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Amendment, Environmental Impact Statement, Petrified Forest National Park, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for a General Management Plan amendment, Petrified Forest National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement (EIS) for a General Management Plan (GMP) amendment for Petrified Forest National Park.

The park is currently managed under a GMP that was completed in 1993. This plan describes a proposed boundary expansion for the park of approximately 93,000 acres. However, the 1993 GMP does not prescribe management for the proposed addition lands. The GMP was revised in 2004 to address specific aspects of the park's management; this GMP Revision also does not address management activities for proposed addition lands.

Public Law 108–430 was passed by Congress and signed by the President in December 2004. This Act expanded Petrified Forest National Park boundaries by approximately 125,000 acres, and directed the NPS to prepare a management plan for the new park lands within three years. Planning for the new lands is the focus of this GMP amendment and associated EIS.

The GMP amendment will establish the overall direction for park addition lands, setting broad management goals for the area for the next 15 to 20 years. Among the topics that will be addressed are protection of natural and cultural resources, protection of riparian resources, appropriate range of visitor uses, impacts of visitor uses, adequacy of park infrastructure, visitor access to the park additions area, education and interpretive efforts, and external pressures on the park. Management zones that were established in the current GMP will be applied to addition lands. These zones outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the addition lands.

A range of reasonable alternatives for managing the park, including a no-action alternative and a preferred alternative, will be developed through the planning process and included in the EIS. The EIS will evaluate the potential environmental impacts of the alternatives.

As the first phase of the planning and EIS process, the National Park Service is beginning to scope the issues to be addressed in the GMP amendment. All interested persons, organizations, and agencies are encouraged to submit comments and suggestions regarding the issues or concerns the GMP amendment should address, including a suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts.

DATES: Written comments on the scope of the GMP amendment/EIS will be accepted for 60 days beyond the publication of this Notice of Intent. In addition, a public scoping session will be held in Holbrook, Arizona in the Spring of 2008. The location, date, and time of this meeting will be provided in local and regional newspapers, and on the Internet at *http://parkplanning/nps.gov/pefo*.

ADDRESSES: Written comments or requests to be added to the project mailing list should be directed to: Cliff Spencer, Superintendent, Petrified Forest National Park, P.O. Box 2217, Petrified Forest, AZ 86028; telephone (928) 524–6228; e-mail: *http://parkplanning/nps.gov/pefo*.

FOR FURTHER INFORMATION CONTACT: Contact Cliff Spencer, Superintendent, Petrified Forest National Park, P.O. Box 2217, Petrified Forest, AZ 86028; telephone (928) 524–6228. General information about Petrified Forest National Park is available on the Internet at *http://www.nps.gov/pefo*.

SUPPLEMENTARY INFORMATION: Please submit Internet comments as a text file, avoiding the use of special characters and any form of encryption. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 21, 2008.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8–7409 Filed 4–8–08; 8:45 am]

BILLING CODE 4310–7V–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–448 and 731–TA–1117 (Final)]

Certain Off-the-Road Tires From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: *Effective Date:* April 3, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: Effective February 20, 2008, the Commission established a schedule for the conduct of the final phase of the subject investigations (73 FR 11437, March 3, 2008). One party to these investigations has identified a substantial conflict with respect to its ability to participate in the hearing. Accordingly, at the request of that party and after consideration of the positions of the other parties to the investigations, the Commission is revising its schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than June 27, 2008; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 3, 2008; the prehearing staff report will be placed in the nonpublic record on June 20, 2008; the deadline for filing prehearing briefs is June 27, 2008; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 8, 2008; the deadline for filing posthearing briefs is July 15, 2008; the Commission will make its final release of information on August 5, 2008; and final party comments are due on August 7, 2008.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Dated: April 3, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–7426 Filed 4–8–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Freeway Land Co.,* Civ. No. 07–1819–JO (D. Or.) was lodged with the United States District Court for the District of Oregon on March 27, 2008.

This proposed Consent Decree concerns a complaint filed by the

United States against Freeway Land Company pursuant to Sections 301(a) and 309 of the Clean Water Act, 33 U.S.C. 1311(a) and 1319, to obtain injunctive relief from and to impose civil penalties against the Defendant for violating the Clean Water Act by discharging dredged or fill material into waters of the United States without a Clean Water Act Section 404 permit. The proposed Consent Decree resolves these allegations by requiring Defendant to pay a civil penalty. Additionally, the Corps is considering issuing an after-the-fact Clean Water Act Section 404 permit that would allow the dredged or fill material to remain in place, but would require wetland creation as mitigation. If the Corps denies the permit application, the proposed Decree requires Defendant to remove the dredged or fill material and restore the impacted area.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Michael B. Schon, United States Department of Justice, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *Freeway Land Co.,* DJ No. 90–5–1–1–18205.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Oregon, 740 Mark 0. Hatfield United States Courthouse, 1000 SW., Third Avenue, Portland, OR 97204–2802. In addition, the proposed Consent Decree may be viewed at *http://www.usdoi.gov/enrd/Consent_Decrees.html*.

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division, U.S. Department of Justice.

[FR Doc. E8–7270 Filed 4–8–08; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Altivity Packaging LLC and Graphic Packaging International, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Altivity Packaging LLC and Graphic Packaging International, Inc.*, Civ. Action No. 08–00400. On March 5, 2008, the United States filed a Complaint alleging that the proposed merger between Altivity Packaging LLC (''Altivity'') and Graphic Packaging International, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition for the production, distribution, and sale of coated recycled boxboard (''CRB'') in the United States. Specifically, the Complaint alleges that the merger would enhance the merged firm's ability and incentive to reduce their combined CRB output and anticompetitively raise CRB prices in the United States. The proposed Final Judgment, filed at the same time as the Complaint, requires the parties to divest two Altivity CRB mills in Wasbash, Indiana and Philadelphia, Pennsylvania. If divestiture of the Philadelphia mill is not accomplished, the proposed settlement requires the sale of Altivity's Santa Clara, California CRB mill in the alternative. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481), on the Internet at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua Soven, Chief, Litigation I Section, Antitrust Division, Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (202–307–0001).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Altivity Packaging LLC, 1500 Nicholas Blvd., Elk Grove Village, IL 60007, and Graphic Packaging International, Inc., 814 Livingston Court, Marietta, GA 30067, Defendants.

Case: I:08–cv–00400.
Assigned to: Sullivan, Emmet G.
Assign. Date: 3/5/2008.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed merger of Graphic Packaging International, Inc. (''Graphic'') and Altivity Packaging, LLC (''Altivity''). The United States alleges as follows:

I. Nature of the Action

1. On July 10, 2007, Altivity and Graphic announced plans to combine their businesses in a transaction valued at $1.75 billion. Altivity and Graphic are respectively the first and fourth largest producers of coated recycled boxboard (''CRB'') in the United States and Canada (hereinafter, ''North America''). CRB is a type of paperboard used to make folding cartons used in consumer and commercial packaging, such as cereal boxes. Both companies are also major integrated producers of folding cartons made from CRB (hereinafter, ''CRB folding cartons''). The total annual volume of CRB supplied to the packaging industry in North America is valued at approximately $1.6 billion.

2. The proposed merger of Graphic and Altivity would create a single firm in control of approximately 42 percent of the total supply of CRB in North America and would likely result in increased prices of CRB. The resulting increases in CRB prices would have the further effect of increasing the prices of CRB folding cartons.

3. Unless the transaction is enjoined, the proposed merger of Graphic and Altivity would likely substantially lessen competition in the supply of CRB in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Jurisdiction and Venue

4. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25 and 28 U.S.C. 1331, 1337(a), and 1345.

5. Graphic and Altivity produce and sell CRB and CRB folding cartons in the flow of interstate commerce, and their production and sale of CRB and CRB

folding cartons substantially affect interstate commerce. Defendants have consented to venue and personal jurisdiction in this judicial district.

III. The Defendants

6. Altivity, a Delaware limited liability company headquartered in Elk Grove Village, Illinois, is the largest CRB producer in North America. Altivity is also a major North American producer (or ''converter'') of folding cartons made from CRB and other types of paperboard. Altivity owns and operates five paperboard mills that produce CRB and 24 folding carton converting plants in North America. Altivity's CRB mills have a combined annual production capacity of approximately 722,000 tons, or about 27 percent of total North American CRB supply. In 2006, Altivity had total sales of approximately $2 billion, including approximately $660 million in North American sales of CRB and CRB folding cartons.

7. Graphic, the fourth-largest CRB producer in North America, is incorporated in Delaware and has its principal place of business in Marietta, Georgia. In North America, Graphic owns and operates one CRB paperboard mill, the single largest CRB mill in North America, as well as 19 folding carton converting plants that produce folding cartons from CRB and other types of paperboard. Graphic's CRB mill has a total annual production capacity of approximately 390,000 tons, or about 15 percent of total North American CRB supply. In 2006, Graphic's total sales were approximately $2.4 billion, including approximately $357 million in North American sales of CRB and CRB folding cartons.

8. Graphic also is the largest North American producer of coated unbleached kraft (''CUK''), another type of paperboard. Graphic operates two CUK mills with a total annual production capacity of approximately 1.3 million tons, or about 55 percent of total North American CUK supply. In 2006, Graphic had approximately $1 billion in North American sales of CUK and CUK folding cartons.

IV. Relevant Market

A. Relevant Product Market

9. CRB is a type of paperboard (often called a ''substrate'' in the packaging industry) made from recycled paper. CRB is manufactured by forming and building up multiple layers (or ''plys'') of recycled fiber, and then applying a clay coating to the top layer. The clay-coated top layer provides CRB with a smooth surface for good graphics printability. The bottom layer is left in the natural color of the recycled fiber, typically a greyish or brownish hue, depending on the type of fiber used (grey, if recycled newsprint is used; brown, if recycled corrugated boxes are used). CRB is an intermediary product that undergoes conversion into folding cartons.

10. CRB is the preferred paperboard substrate for a wide range of relatively low-cost folding carton applications, including dry food cartons such as cereal boxes. CRB typically is the single largest cost component of such folding cartons, accounting for as much as 65 percent of the cost of the folding carton.

11. Uncoated recycled boxboard (''URB'') is a lower-grade and lower-cost paperboard compared to CR13. Major uses of URB are in the construction industry (as backing for gypsum wallboard) and in making paperboard cores and tubes (such as industrial cores for winding rolls of paper and other flexible materials, commercial mailing tubes, and tubes for paper towels and toilet paper rolls). URB is not a close substitute for CRB in folding carton applications because it lacks the smooth coated surface needed for good graphics printability.

12. CUK is a clay-coated paperboard made from virgin wood pulp rather than recycled paper, and has a brown-colored back. CUK has greater strength and wet-resistance than CRB and is more expensive than CRB on a price per ton basis. The large majority of CUK produced in North America is used to make beverage carriers (beer and soft-drink cartons) and refrigerated and frozen food packaging, where it is valued for its high strength and wet-resistance properties. Graphic is the larger of the only two North American CUK producers. Altivity does not produce CUK.

13. Solid bleached sulfate (''SBS'') is another type of paperboard made from virgin wood pulp. Produced from bleached white pulp, SBS is the most expensive and highest grade of paperboard used in the folding carton industry. SBS has a bright white finish on both sides, in contrast to CUK's brown back and CRB's grey or brown back. SBS affords the best printing surface of the paperboard grades, and is thus preferred despite its higher cost when superior printability is required. Consequently, SBS is often used to make cartons for higher-priced consumer goods, such as pharmaceuticals, cosmetics, and health and beauty products. When appropriately coated, SBS is also used in certain types of packaging that comes into direct contact with food, again due to manufacturer and consumer preferences for its white appearance. Neither Graphic nor Altivity produces SBS.

14. Because of the price and performance distinctions between CRB and the other folding carton substrates, few customers of CRB and CRB folding cartons consider URB, CUK, or SBS to be economical substitutes for CRB. Further, even where another substrate can provide acceptable performance at a similar price, few customers will switch from their existing substrate to an alternative substrate because doing so is time consuming, costly, and risky. The customer must first qualify the alternative substrate, and switching often requires modification of folding carton converting equipment and end-users' packaging lines. Customers of CRB and CRB folding cartons likely would not switch to URB, CUK, SBS, or any other potential substitutes in response to a small but significant and non-transitory increase in CRB prices to an extent that would make such a price increase unprofitable. Accordingly, CRB constitutes a relevant product market within the meaning of the Clayton Act.

15. Based on relative price and performance for some customers, CUK is the next closest substitute for CRB, and any switching by CRB customers to another substrate in response to a small but significant and non-transitory increase in CRB prices would primarily be to CUK. As alleged in paragraph 14, switching by some customers to CUK would not be sufficient to make a CRB price increase unprofitable, for reasons including that the two producers of CUK are currently operating at near-capacity. If such switching to CUK would constrain a CRB price increase, however, CRB and CUK would constitute a relevant product market within the meaning of the Clayton Act, and the relevant market would be no larger than CRB and CUK.

B. Relevant Geographic Market

16. North America is a relevant geographic market for the supply of CRB, and for the supply of CRB and CUK, within the meaning of the Clayton Act. Due to relatively high transportation costs, unfavorable currency exchange rates, and other cost and marketing disadvantages to importing foreign CRB, CUK, or potential substitutes for CRB or CUK into North America, a small but significant increase in the prices of CRB produced in North America would not likely cause foreign suppliers to increase North American sales in sufficient volumes to make such a price increase unprofitable.

V. Anticompetitive Effects

17. Since 2005, the North American CRB market has experienced significant producer consolidations, including CRB mill closures that have caused the removal of hundreds of thousands of tons of CRB production capacity. As a result, the market has become highly concentrated, with Altivity and Graphic becoming the first and fourth largest of only four major producers. The recent producer consolidations and capacity reductions in North America have resulted in high capacity utilization rates by the remaining producers, and have significantly constrained the market supply of CRB.

18. If the proposed merger of Graphic and Altivity is permitted to occur, the North American CRB market would become substantially more concentrated. The combination of Graphic and Altivity would control approximately 42 percent of total North American CRB supply. The market would have only three major competitors controlling a collective market share of approximately 86 percent. Using a standard concentration measure called the Herfindahl-Herschman Index (or ''HHI,'' defined and explained in Appendix A), the proposed merger would substantially raise market concentration in a highly concentrated market, producing an HHI increase of approximately 788 and a post-merger HHI of approximately 2745.

19. Even if the relevant product market were broader than CRB and included CUK, the proposed merger of Graphic and Altivity would also substantially increase concentration in the North American market. The merger would produce a single firm controlling approximately 49 percent of total North American supply of CRB and CUK, combining Graphic's 35 percent and Altivity's 14 percent. The four remaining major competitors would have a collective market share of approximately 94 percent. The merger would substantially raise market concentration in a highly concentrated market, producing an HHI increase of approximately 991 and a post-merger HHI of approximately 3155.

20. The proposed merger would produce a further substantial consolidation of the North American CRB market and eliminate significant head-to-head competition between Graphic and Altivity, substantially lessening competition and likely causing higher CRB prices than there would be without the merger. These CR13 price increases are also likely to cause increases in the prices of CRB folding cartons.

21. Producers of CUK are not likely to defeat an increase in the price of CRB after the merger of Graphic and Altivity. Graphic produces more than half of the CUK sold in North America, and would not have an incentive to undermine a post-merger increase in the price of CRB. The only other North American CUK producer is operating at nearly full capacity and would not increase its sales of CUK or other potential substitutes for CRB by an amount sufficient to undermine a post-merger increase in CRB prices.

VI. Absence of Countervailing Factors

22. Supply responses from competitors or potential competitors will not prevent the likely anticompetitive effects of the proposed merger. Existing North American CRB producers face capacity and other operational limitations that would constrain them from significantly expanding output in response to a post-merger Graphic-Altivity increase in the price of CRB. Further, to the extent that they have any additional capacity to produce more CRB, these producers would likely support a Graphic-Altivity price increase by raising their own prices.

23. Foreign producers import into North America small quantities of CRB and potential substitutes for CRB. The ability of foreign paperboard producers to expand imports into North America is limited by their commitments to home and other markets that are more profitable than North America, as well as significant transportation, currency exchange, and other disadvantages and competitive constraints to importing into North America. Thus, the potential for expansion of foreign supply, by itself or in combination with other supply responses, would not likely be sufficient to constrain a small but significant and non-transitory North American CRB price increase.

24. New entry into the production and sale of CRB or CUK is costly and time consuming. Among other things, entry would require investments of over $100 million and two years or more to construct and install production equipment and facilities. New entry is not likely to occur on a timely or sufficient basis in response to a small but significant and non-transitory post-merger CRB price increase in North America.

25. The anticompetitive effects of the proposed Graphic-Altivity merger are not likely to be eliminated or mitigated by any efficiencies that may be achieved by the merger.

VII. Violation Alleged

26. The United States hereby incorporates paragraphs 1 through 25.

27. The proposed merger of Graphic and Altivity would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

(a) Actual and potential competition between Graphic and Altivity for CRB sales would be eliminated; and

(b) Competition generally in the North American market for CRB (or in a North American market for CRB and CUK) would be substantially lessened.

Prayer for Relief

The United States requests:

1. That the proposed acquisition be adjudged to violate section 7 of the Clayton Act, 15 U.S.C. 18;

2. That the Defendants be permanently enjoined and restrained from carrying out the proposed merger or from entering into or carrying out any other agreement, understanding, or plan by which Graphic would acquire, be acquired by, or merge with, any of the other Defendants;

3. That the United States be awarded costs of this action; and

4. That the United States have such other relief as the Court may deem just and proper.

Respectfully submitted,

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Appendix A

Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 (302 + 302 +202 + 202 = 2600). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. See Horizontal Merger Guidelines 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. See id.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Altivity Packaging, LLC and Graphic Packaging International, Inc., Defendants.

Case: I:08–cv–00400.
Assigned To: Sullivan, Emmet G.
Assign. Date: 3/5/2008.
Description: Antitrust.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on March 5, 2008, and Plaintiff and Defendants, Altivity Packaging, LLC (''Altivity'') and Graphic Packaging International, Inc. (''Graphic''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C.18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom one or more Divestiture Mills are divested pursuant to this Final Judgment.

B. ''Altivity'' means Defendant Altivity Packaging, LLC, a Delaware limited liability company with its headquarters in Elk Grove Village, Illinois, its direct and indirect parents, private equity owners or partners, successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Graphic'' means Defendant Graphic Packaging International, Inc., a Delaware corporation with its headquarters in Marietta, Georgia, its direct and indirect parents, successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. ''CRB'' means coated recycled boxboard.

E. ''Divestiture Mills'' means Altivity's CRB mill located at 455 Factory Street, Wabash, Indiana 46992 (the ''Wabash Mill''), including all Mill Assets relating to the Wabash Mill and Altivity's CRB mill located at 5000 Flat Rock Road, Philadelphia, Pennsylvania 19127 (the ''Philadelphia Mill''), including all Mill Assets relating to the Philadelphia Mill.

F. ''Mill Assets'' means:

(1) All tangible assets used in, devoted to, or necessary to the operations of a Divestiture Mill, including but not limited to all such assets relating to research and development activities, manufacturing equipment, tooling and fixed assets, real property (leased or owned), personal property, inventory, CRB reserves, information technology systems, office furniture, materials, supplies, docking facilities, on-or off-site warehouses or storage facilities; all licenses, permits and authorizations issued by any governmental organization; all contracts, agreements, leases (including renewal rights), commitments, certifications, and understandings, including supply agreements; customer lists, accounts, and credit records; all interests in, and contracts relating to, power generation; all repair and performance records and all other records; and

(2) all intangible assets used in, devoted to, or necessary to the operations of a Divestiture Mill, including but not limited to all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, environmental studies or assessments, design tools and simulation capability, all manuals and technical information provided to the employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts, including, but not limited to designs of experiments, and results of successful and unsuccessful designs and experiments.

G. ''Alternative Asset'' means that Altivity's CRB mill located at 2600 De La Cruz Blvd, Santa Clara, California 95050 (the ''Santa Clara Mill''), including all Mill Assets relating to the Santa Clara Mill, is deemed a Divestiture Mill if the conditions set forth in Section V(A)(2) of this Final Judgment are satisfied.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets that include the Divestiture Mills, they shall require, as a condition of the sale or other disposition, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from an Acquirer under this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Wabash Mill and the Philadelphia Mill in a manner consistent with this Final Judgment to an Acquirer or Acquirers approved by the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Wabash and Philadelphia Mills as expeditiously as possible.

B. Defendants promptly shall make known, by usual and customary means, the availability of the Wabash and Philadelphia Mills to be divested pursuant to section IV(A) of this Final Judgment. Defendants shall inform any person making inquiry that the divestitures are pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Unless the United States otherwise consents in writing, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the divestitures that customarily are provided in a due

diligence process except such information or documents subject to the attorney client or work product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Unless the United States otherwise consents in writing, Defendants shall provide an Acquirer and the United States information relating to Defendants' personnel involved in management, production, operations, or sales activities of a Divestiture Mill to enable an Acquirer to make offers of employment. Defendants will not prevent or interfere with any efforts by an Acquirer to employ any of Defendants' officers, directors, or employees having any executive, management, production, operations, sales, or other responsibilities relating to a Divestiture Mill, and if requested, will release any such person from any non-compete agreement with Defendants.

D. Unless the United States otherwise consents in writing, Defendants shall permit prospective Acquirers of a Divestiture Mill to have reasonable access to personnel and to make inspections of all relevant physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process, provided that Defendants only need to comply with this provision as to the Alternative Asset in the event that the Alternative Asset is to be divested pursuant to section V(A) of this Final Judgment.

E. Defendants shall warrant to an Acquirer of a Divestiture Mill that the Divestiture Mill and all related Mill Assets will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of a Divestiture Mill or any related Mill Assets.

G. At the option of an Acquirer and upon approval by the United States, in its sole discretion, Defendants shall enter into a transition services agreement based upon commercially reasonable terms and conditions. Such an agreement may not exceed twelve (12) months from the date of divestiture. Transition services may include information technology support, information technology licensing, computer operations, data processing, logistics support, and such other services as reasonably necessary to operate a Divestiture Mill or related Mill Assets.

H. Defendants shall warrant to an Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of a Divestiture Mill or related Mill Assets, and shall enter into a contractual commitment with the Acquirer that following the sale of a Divestiture Mill, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of a Divestiture Mill or any related Mill Assets.

I. Unless the United States otherwise consents in writing, any divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V. of this Final Judgment, shall include a Divestiture Mill and all related Mill Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Mill can and will be used by an Acquirer as a viable, ongoing business engaged in producing, distributing, and selling CRB, that the Divestiture Mill will remain viable, and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the production, distribution, and sale of CRB;

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms or conditions of any agreement between an Acquirer and Defendants would give Defendants an ability to unreasonably raise the Acquirer's costs, to lower an Acquirer's efficiency, or otherwise to interfere with the ability of an Acquirer to compete effectively in the production, distribution, and sale of CRB; and

(3) may be required by the United States, in its sole discretion, to be accomplished by sale of all divestiture assets to a single Acquirer.

J. As part of a divestiture, and at the option of an Acquirer, Defendants may negotiate a transitional supply agreement or agreements to supply CRB to Defendants' folding carton plants previously supplied by a Divestiture Mill purchased by the Acquirer. Any such agreement shall be subject to the approval of the United States in its sole discretion, shall be on commercially reasonable terms, and shall have a term no longer than three (3) years. The volume requirements during the first year of any such agreement may be up to 100 percent of the 2007 volumes supplied by the particular Divestiture Mill to Altivity's folding carton plants, no more than 75 percent during the second year, and no more than 50 percent during the third year.

V. Appointment of Trustee

A. If Defendants have not accomplished the divestitures ordered by Section IV(A) of this Final Judgment within the time period specified in Section IV(A), Defendants shall notify the United States and provide the pertinent facts in writing. Thereafter, upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to accomplish divestitures in the following manner.

(1) If Defendants have not divested one or both of the Divestiture Mills within the time period specified in Section IV(A), the United States shall seek appointment of a trustee to ensure divestiture of the Wabash Mill and the Philadelphia Mill or the Alternative Asset.

(2) If, at the time of the trustee's appointment, the Philadelphia Mill has not been divested, the trustee shall seek to divest the Philadelphia Mill within 120 calendar days thereafter. If the Philadelphia Mill has not been divested during this 120-day period, the trustee shall divest the Philadelphia Mill or the Alternative Asset within 90 calendar days thereafter.

(3) The United States, in its sole discretion, may allow the trustee one or more extensions of the time periods specified in this Section, not to exceed sixty (60) days in total, and shall notify the Court in such circumstances.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Mills. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer or Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from divestitures effected by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of divestiture assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered

under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Mills, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to effect the divestitures.

G. If the trustee has not accomplished the divestitures within seven (7) months after its appointment, and any extension pursuant to Section V(A)(3) of this Final Judgment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestitures required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Mills, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, or the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it approves or objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court. Notwithstanding the foregoing provisions of this Section VI, the United States, in its sole discretion, may withhold its approval or objection to the proposed divestiture of a single Divestiture Mill until such time as the United States concludes that it can approve an Acquirer or Acquirers for both Divestiture Mills consistent with the terms of the Final Judgment.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Asset Preservation

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in a Divestiture Mill, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Mills, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps they have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Mills until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the United States's option, to require Defendants to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days

notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.18a (the ''HSR Act''), Defendants, without providing advance notification to the Antitrust Division of the United States Department of Justice (''DOJ''), shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any CRB mill or producer in North America during the term of this Final Judgment if the value of such acquisition exceeds $2,000,000.

B. Such notification shall be provided to the DOJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only with respect to CRB. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the DOJ make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this section shall be resolved in favor of filing notice.

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Mills or related Mill Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Altivity Packaging, LLC and Graphic Packaging International, Inc., Defendants.

Case: I:08–cv–00400.
Assigned to: Sullivan, Emmet G.
Assign. Date: 3/5/2008.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 5, 2008, the United States filed a civil antitrust complaint seeking to enjoin the proposed merger of Altivity Packaging, LLC (''Altivity'') and Graphic Packaging International, Inc (''Graphic''). The Complaint alleges that the likely effect of the merger would be to lessen competition substantially in the production and sale of coated recycled boxboard (''CRB'') in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher CRB prices in the United States. At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order (''Stipulation'') and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger.

Under the proposed Final Judgment, which is explained more fully in Section III, Defendants are required to divest two Altivity mills that manufacture CRB. Until the Altivity CRB mills are sold and operated under new ownership, Defendants must ensure that the mills and related assets are operated as ongoing, economically viable, and competitive assets.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. Defendants and the Proposed Transaction

On July 10, 2007, Altivity and Graphic announced plans to combine their businesses in a transaction valued at $1.75 billion. Altivity and Graphic are, respectively, the first and fourth largest producers of coated recycled boxboard (''CRB'') in the United States and Canada (hereinafter, ''North America''). CRB is a type of paperboard used to make folding cartons used in consumer and commercial packaging, such as cereal boxes. Both companies are also major producers (or ''converters'') of folding cartons made from CRB. The total annual volume of CRB supplied to the packaging industry in North America is valued at approximately $1.6 billion. The proposed merger would have created a single firm in control of approximately 42 percent of the total supply of CRB in North America.

Altivity, a Delaware limited liability company headquartered in Elk Grove Village, Illinois, is the largest CRB producer in North America. Altivity is also a major North American converter of folding cartons made from CRB and other types of paperboard. Altivity owns and operates five paperboard mills that produce CRB and 24 folding carton converting plants in North America. Altivity's CRB mills have a combined annual production capacity of approximately 722,000 tons, or about 27 percent of total North American CRB supply. In 2006, Altivity had total sales of approximately $2 billion, including approximately $660 million in North American sales of CRB and folding cartons made from CRB.

Graphic, the fourth-largest CRB producer in North America, is incorporated in Delaware and has its principal place of business in Marietta, Georgia. Graphic owns and operates one CRB paperboard mill and 19 folding carton converting plants that produce folding cartons from CRB and other types of paperboard. Graphic's CRB mill has a total annual production capacity of approximately 390,000 tons, or about 15 percent of total North American CRB supply. In 2006, Graphic's total sales were approximately $2.4 billion, including approximately $357 million in North American sales of CRB and folding cartons made from CRB.

Graphic also is the largest North American producer of coated unbleached kraft (''CUK''), another type of paperboard. Graphic operates two CUK mills with a total annual production capacity of approximately 1.3 million tons, or about 55 percent of total North American CUK supply. In 2006, Graphic had approximately $1 billion in North American sales of folding cartons made from CUK.

B. Competitive Effects of the Proposed Merger

1. CRB Is the Relevant Product Market

The Complaint alleges that the production and sale of CRB is a relevant product market within the meaning of Section 7 of the

Clayton Act. CRB is a type of paperboard made from recycled paper. CRB is manufactured by forming and building up multiple layers (or ''plys'') of recycled fiber, and then applying a clay coating to the top layer. The clay-coated top layer provides CRB with a smooth surface for good graphics printability. The bottom layer is left in the natural color of the recycled fiber, typically a greyish or brownish hue, depending on the type of fiber used (grey, if recycled newsprint is used; brown, if recycled corrugated boxes are used).

CRB is an intermediary product (often called a ''substrate'' in the packaging industry) that undergoes conversion into folding cartons. CRB is the preferred paperboard substrate for a wide range of relatively low-cost folding carton applications, including dry food cartons such as cereal boxes. CRB typically is the single largest cost component of such folding cartons, accounting for as much as 65 percent of the cost of the folding carton.

In folding carton applications where CRB is used, other types of paperboard are not close substitutes for CRB. Uncoated recycled boxboard (''URB'') is a lower-grade and lower-cost paperboard than CRB; it lacks the smooth coated surface that provides for good graphics printability needed in most folding carton applications.[1] Coated unbleached kraft (''CUK'') is a clay-coated paperboard made from virgin wood pulp rather than recycled paper, and has a brown-colored back. CUK has greater strength and wet-resistance than CRB and is more expensive than CRB on a price per ton basis.[2] Solid bleached sulfate (''SBS'') is another type of paperboard made from virgin wood pulp. Produced from bleached white pulp, SBS is the most expensive and highest grade of paperboard used in the folding carton industry.[3]

Because of the price and performance distinctions between CRB and the other folding carton substrates, few customers of CRB and CRB folding cartons consider URB, CUK, or SBS to be economical substitutes for CRB. Further, even where another substrate can provide acceptable performance at a similar price, few customers will switch from their existing substrate to an alternative substrate because doing so is time consuming, costly, and risky. The customer must first qualify the alternative substrate, and switching often requires modification of folding carton converting equipment and end-users' packaging lines. Customers of CRB and CRB folding cartons likely would not switch to URB, CUK, SBS, or any other potential substitutes in response to a small but significant and non-transitory increase in CRB prices to an extent that would make such a price increase unprofitable.

Based on relative price and performance for some customers, CUK would be the next closest substitute for CRB, and any switching by CRB customers to another substrate in response to a small but significant and non-transitory increase in CRB prices would primarily be to CUK. Switching by some customers to CUK would not be sufficient to make a CRB price increase unprofitable, for reasons including that the two North American producers of CUK (of which Graphic is one) are currently operating at near-capacity. However, if such switching to CUK would constrain a CRB price increase, CRB and CUK would constitute a relevant product market within the meaning of the Clayton Act, and the relevant market would be no larger than CRB and CUK.

2. North America Is a Relevant Geographic Market

As alleged in the Complaint, North America is a relevant geographic market for the supply of CRB (and for the supply of CRB and CUK) within the meaning of the Clayton Act. Due to relatively high transportation costs, unfavorable currency exchange rates, and other cost and marketing disadvantages to importing foreign CRB, CUK, or potential substitutes for CRB or CUK into North America, a small but significant and non-transitory increase in the prices of CRB produced in North America would not likely cause foreign suppliers to increase North American sales in sufficient volumes to make such a price increase unprofitable.

3. Anticompetitive Effects of the Proposed Merger

As alleged in the Complaint, the North American CRB market is highly concentrated. The proposed merger of Graphic and Altivity would further increase the level of market concentration by a substantial amount. The combination of Graphic and Altivity would control approximately 42 percent of total North American CRB supply. The market would have only three major competitors controlling a collective market share of approximately 86 percent. Using a standard concentration measure called the Herfindahl-Herschman Index (or ''HHI''), the proposed merger would substantially raise market concentration in a highly concentrated market, producing an HHI increase of approximately 788 and a post-merger HHI of approximately 2745.

Further, the CRB market is currently operating at near capacity. Because of this condition and the fact that the proposed merger would substantially increase the capacity upon which the merged firm would benefit from a price increase, the merger would create incentives for a combined Graphic-Altivity to close one or more CRB mills or to otherwise reduce CRB production capacity or output. As a result, the North American CRB market would likely experience higher CRB prices than would have prevailed absent the merger.

Even if the relevant product market were broader than CRB and included CUK, the proposed merger of Graphic and Altivity would also substantially increase concentration in the North American market. In that event, the merger would produce a single firm controlling approximately 49 percent of total North American supply of CRB and CUK (combining Graphic's 35 percent and Altivity's 14 percent), and the four major post-merger competitors would have a collective market share of approximately 94 percent. The merger would substantially raise market concentration in a highly concentrated market, producing an HHI increase of approximately 991 and a post-merger HHI of approximately 3155.

4. Neither Supply Responses Nor Entry Would Constrain Likely Anticompetitive Effects of the Proposed Merger

The Complaint alleges that supply responses from competitors or potential competitors would not likely prevent the anticompetitive effects of the proposed merger of Graphic and Altivity. As stated above, existing North American CRB producers face capacity and other operational limitations that would constrain them from significantly expanding output in response to a post-merger Graphic-Altivity increase in the price of CRB. Further, to the extent that they have any additional capacity to produce more CRB, these producers would likely find it most profitable to react to a Graphic-Altivity price increase by raising their own prices.

Foreign producers import into North America small quantities of CRB, collectively accounting for approximately 90,000 tons and three percent of total CRB sales in North America. The ability of foreign paperboard producers to expand imports into North America is limited by their commitments to markets that are more profitable than North America, as well as significant transportation costs, logistical difficulties, currency exchange differences, and other disadvantages and competitive constraints to importing into North America. Thus, the potential for expansion of foreign supply, by itself or in combination with other supply responses, would not likely be sufficient to constrain a small but significant and non-transitory North American CRB price increase.

New entry into the production and sale of CRB or CUK is costly and time consuming. Among other things, entry would require investments of over $100 million and two years or more to construct and install production equipment and facilities. New entry is not likely to occur on a timely or sufficient basis in response to a small but significant and non-transitory post-merger CRB price increase in North America.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires the Defendants to divest two of Altivity's CRB mills and all associated mill assets. The mills to be divested by the Defendants are the

[1] URB is used in the construction industry to make products such as backing for gypsum wallboard. URB is also used to produce paperboard cores and tubes, such as industrial cores for winding paper and other flexible materials, commercial mailing tubes, and tubes for paper towels and toilet paper rolls.

[2] The large majority of CUK produced in North America is used to make beverage carriers (beer and soft-drink cartons) and refrigerated and frozen food packaging. CUK is valued for its high strength and resistance to wetness.

[3] SBS has a bright white finish on both sides, in contrast to CUK's brown back and CRB's grey or brown back. SBS affords the best printing surface of the paperboard grades, and is thus preferred despite its higher cost when superior printability is required. Consequently, SBS is often used to make cartons for higher-priced consumer goods, such as pharmaceuticals, cosmetics, and health and beauty products. When appropriately coated, SBS is also used in certain types of packaging that come into direct contact with food, again due to manufacturer and consumer preferences for its white appearance.

Altivity mill in Wabash, Indiana, with an annual CRB production capacity of approximately 159,000 tons, and the Altivity mill in Philadelphia, Pennsylvania, with an annual CRB production capacity of approximately 125,000 tons.

If Defendants do not divest the Wabash and Philadelphia mills within a prescribed period of time, the proposed Final Judgment provides for the Court to appoint a trustee, upon application of the United States, to accomplish the divestitures. If the trustee does not divest the Wabash and Philadelphia mills within a specified time period, the proposed Final Judgment authorizes the trustee to divest the Wabash mill and an Altivity mill in Santa Clara, California, with an annual CRB production capacity of 135,000 tons, in lieu of the Philadelphia mill.

Defendants' divestiture of the Wabash and Philadelphia mills would result in the sale of 284,000 tons of CRB production capacity, or approximately 11 percent of total North American CRB capacity, to a competitor or competitors of the merged firm. If a trustee is required to sell the Wabash and Santa Clara mills, approximately 299,000 tons of CRB production capacity, or approximately 12 percent of total North American CRB capacity, would be divested. Under the proposed Final Judgment, the two mills may be sold to a single buyer, or to two separate buyers, with the approval of the United States in its sole discretion. In addition, the Defendants are required to satisfy the United States in its sole discretion that the divested assets will be operated as viable ongoing businesses that will compete effectively in the North American CRB market, and that the divestitures will successfully remedy the otherwise anticipated anticompetitive effects of the proposed merger.

In evaluating the likely competitive effects of the proposed merger, the United States considered market shares, costs of production, current and historical industry capacity and utilization, current and historical CRB market pricing, historical and projected market demand for CRB, and the relative demand elasticities of CRB and its next closest substitute, CUK. The United States concluded that allowing the merger as proposed would give the merged firm control of a sufficiently large amount of industry capacity as to create an incentive to reduce its CRB production capacity or output. The merged firm would have such an incentive because its CRB capacity would have been large enough to allow it to gain from an increase in the price of CRB by an amount that would exceed losses associated with the contraction of capacity or output necessary to generate such a price increase. The divestitures required by the proposed Final Judgment would remove this incentive by significantly reducing the merged firm's capacity and output and placing it in the hands of a competitor or competitors. As a result, the merged firm would not be able to recoup the losses associated with a contraction of capacity or output.

If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. If any of the requisite divestitures has not been accomplished at the end of the trustee's term, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Until the divestitures under the proposed Final Judgment have been accomplished, Defendants are required to comply with an Asset Preservation Stipulation and Order. Pursuant to this Stipulation and Order, the Defendants are required to preserve, maintain, and operate the divestiture mills as ongoing businesses, and prohibited from taking any action that would jeopardize the divestitures required by the proposed Final Judgment.

Finally, the proposed Final Judgment sets forth a process for and the circumstances when Defendants must notify the United States of future acquisitions by Defendants of a CRB mill or producer valued in excess of $2 million. This notification requirement would apply to transactions not otherwise subject to the reporting and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and runs for ten years from entry of the Final Judgment. The provision is intended to ensure that any such acquisition does not undermine the benefits generated from the divestitures required by the proposed Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Joshua H. Soven, Chief, Litigation I Section, 1401 H Street, NW., Suite 4000, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have sought preliminary and permanent injunctions against the proposed merger. The United States is satisfied, however, that the divestitures required by the proposed Final Judgment will preserve competition in the market identified by the United States and that such a remedy would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, uncertainty, and the expense of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[4]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37,40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11.[6]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 5, 2008.

Respectfully submitted,
Weeun Wang, *Attorney*,
U.S. Department of Justice,
Antitrust Division,
Litigation I Section,
1401 H Street, NW., Suite 4000,
Washington, DC 20530,
(202) 307–3952.

[FR Doc. E8–7235 Filed 4–8–08; 8:45 am]

BILLING CODE 4410–11–M

[4] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[5] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ''reaches of the public interest'').

[6] See *United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 08–026]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Sharon Mar, Office of Information and Regulatory Affairs;

Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The need for educational survey(s) is to inform NASA and specific projects about education and programmatic issues and topics leading to improved customer service for stakeholders. The NASA-funded education programs served are primarily from the Earth Science education initiatives.

II. Method of Collection

NASA will utilize a Web-based education survey to inform NASA and specific projects about education and programmatic issues and topics leading to improved customer service for its stakeholders. The NASA education programs served, including those from REASON (Research, Education and Applications Solutions Network) program are primarily from Earth Science initiatives.

III. Data

Title: NASA Education Customer Survey.

OMB Number: 2700–XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households, business and other for-profit, and Federal Government.

Estimated Number of Respondents: 5000.

Estimated Time Per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 1250.

Estimated Total Annual Cost: $31,500.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

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

Gary Cox,

Associate Chief Information Officer (Acting).

[FR Doc. E8–7392 Filed 4–8–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of an open meeting with a closed session.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Institute for Literacy Advisory Board. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: April 24–25, 2008.

Time: April 24 from 8:30 a.m.–5 p.m.; April 25 from 8:30 a.m.–11:30 a.m. and 12:15 p.m.–2 p.m.; closed session April 25 from 11:30 a.m.–12:15 p.m.

ADDRESSES: On April 24: U.S. Department of Labor, 200 Constitution Avenue NW., 5th Floor, Room C5515 (Executive Board Room), Washington, DC 20210. The general public is advised to notify Steve Langley no later than April 17, 2008 to attend the first day of the meeting at the U.S. Department of Labor. Mr. Langley can be reached at telephone number (202) 233–2043 or by e-mail at *slangley@nifl.gov.*

All attendees must have valid photo identification.

On April 25: The National Institute for Literacy, 1775 I St. NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Steve Langley, Staff Assistant, the National Institute for Literacy; 1775 I St. NW., Suite 730; phone:(202) 233–2043; fax:(202) 233–2050; e-mail: *slangley@nifl.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Institute for Literacy Advisory Board is authorized by section 242 of the Workforce Investment Act of 1998, Public Law 105–220 (20 U.S.C. 9252). The Board consists of 10 individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The purpose of this meeting is to discuss the Institute's future and current program priorities; status of on-going Institute work; other relevant literacy activities and issues; and other Board business as necessary.

On April 25, 2008 from 11:30 a.m. to 12:15 p.m., the Board will meet in closed session to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute, including consideration of the Director's term of appointment and performance. The discussion is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Steve Langley at 202 233–2043 no later than April 17, 2008. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Request for Public Written Comment. The public may send written comments to the Advisory Board no later than 5 p.m. on April 17, 2008, to Steve Langley at the National Institute for Literacy,

1775 I St. NW., Suite 730, Washington, DC 20006, e-mail: *slangley@nifl.gov.*

Records are kept of all Committee proceedings and are available for public inspection at the National Institute for Literacy, 1775 I St. NW., Suite 730, Washington, DC 20006, from the hours of 9 a.m. to 5 p.m., Eastern Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/federegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 3, 2008.

Sandra Baxter,

Director, The National Institute for Literacy.

[FR Doc. E8–7402 Filed 4–8–08; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

Commonwealth of Pennsylvania: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Pennsylvania; Notice of Waiver Termination

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the Commonwealth of Pennsylvania.

SUMMARY: This notice is announcing that on March 10, 2008, Dr. Dale E. Klein, Chairman of the U.S. Nuclear Regulatory Commission (NRC), and on March 26, 2008, Governor Edward G. Rendell of the Commonwealth of Pennsylvania signed an Agreement as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (the Act). The Agreement provides for the Commission to discontinue its regulatory authority and for Pennsylvania to assume regulatory authority over the possession and use of byproduct material as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act, source material, special nuclear materials (in quantities not sufficient to form a critical mass), and land disposal of all waste for such materials. Under the Agreement, a person in Pennsylvania possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150. Approximately 650 licenses have been transferred to Pennsylvania's jurisdiction. This Agreement became effective on March 31, 2008, and is published here as required by Section 274e. of the Act.

Notice of Waiver Termination

On March 31, 2008, the Commission terminated the time-limited waivers of the Energy Policy Act of 2005 requirements granted by the Commission (70 FR 51581; August 31, 2005) to Pennsylvania for byproduct material as defined in Sections 11e.(3) and 11e.(4) of the Act.

FOR FURTHER INFORMATION CONTACT: Kim Lukes, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone 301–415–6701; e-mail *Kim.Lukes@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC published the draft Agreement in the **Federal Register** for comment once a week for four consecutive weeks on June 18, 2007 (72 FR 33541), June 25, 2007 (72 FR 34728), July 2, 2007 (72 FR 36069), and July 9, 2007 (72 FR 37268), as required by the Act. The public comment period ended on July 18, 2007. The Commission received two comment letters. The comments do not affect the NRC staff's assessment, which finds that the Pennsylvania Agreement materials program is adequate to protect public health and safety and compatible with the NRC's program. The proposed Pennsylvania Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Pennsylvania, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Pennsylvania Bureau of Radiation Protection, the NRC staff completed an assessment of the Pennsylvania program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on February 12, 2008, that the proposed Pennsylvania program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Documents may be examined and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Documents referred to in this notice and other publicly available documents are available electronically at the NRC's Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resources@nrc.gov*.

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

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Pennsylvania for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the Act, source materials, and special nuclear materials

in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Pennsylvania is authorized under the Pennsylvania Radiation Protection Act of July 10, 1984, Public Law 688, No. 147, as amended, 35 P.S. 7110.101 *et seq.*, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Pennsylvania certified on November 9, 2006, that the Commonwealth of Pennsylvania (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on February 12, 2008, that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth acting on behalf of the Commonwealth as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of all byproduct, source, and special nuclear waste materials covered by this Agreement.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to the following:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. Byproduct materials as defined in Section 11e.(2) of the Act.

Article III

With the exception of those activities identified in Articles II, paragraphs 1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs 5 and 6, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Section 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implications or otherwise be of regulatory interest.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on March 31, 2008, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this 10th day of March, 2008.

For the United States Nuclear Regulatory Commission.

Dale E. Klein,

Chairman.

Done at Harrisburg, Pennsylvania, in triplicate, this 26th day of March, 2008.

For the Commonwealth of Pennsylvania.

Edward G. Rendell,

Governor.

[FR Doc. E8–7444 Filed 4–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06394]

Notice of Consideration of Amendment Request for Decommissioning of the Department of the Army, U.S. Army Research, Development and Engineering Command, Army Research Laboratory, Aberdeen Proving Ground, Maryland and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406. Telephone: (610) 337–5040; fax number: (610) 337–5269; or e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMB–141 issued to the Department of the Army, U.S. Army Research, Development and Engineering Command, Army Research Laboratory (the Licensee), to authorize decommissioning of its Army Research Laboratory (ARL) Experimental Facility 14, formally known as Range 14, at the Aberdeen Proving Ground, Maryland (the Facility), under the Licensee's Decommissioning Plan (DP).

An NRC administrative review, documented in a letter to the Army Research Laboratory dated December 18, 2007, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SMB–141. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. The license will be amended to authorize release of the Facility for unrestricted use if this amendment is approved following completion of decommissioning activities and verification by the NRC that the radiological criteria for license termination have been met.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding the decommissioning of Range 14. Any person whose interest may be affected by this proceeding and who desires to participate as a party must file a request for a hearing and, a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requester must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requester (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requester will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html* . Information about applying for a digital ID certificate is available on NRC's public website at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requester has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely,

an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(c)(1)(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3)), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by June 9, 2008.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial, or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Submittal Letter dated November 6, 2007—ML073180538.

R14 Range DP, Rev. 0—ML073180560.

R14 Range DP Rev. 0, App. A, License No. SMB–141, Am. 27—ML073180578.

R14 Range DP Rev. 0, App. B, Characterization Report—ML073180594.

R14 Range DP Rev. 0, App. C, Determination of DCGLs—ML073180601.

R14 Range DP Rev. 0, App. D, Final Status Survey Plan—ML073180603.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia, PA, this 2nd day of April, 2008.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E8–7449 Filed 4–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–243; EA–08–099]

In the Matter of Oregon State University (Oregon State University TRIGA Reactor); Order Modifying Amended Facility Operating License No. R–106

I

Oregon State University (the licensee) is the holder of Amended Facility Operating License No. R–106 (the license), originally issued on March 7, 1967, by the U.S. Atomic Energy Commission. The license authorizes operation of the Oregon State University TRIGA Reactor (the facility) at a power level up to 1100 kilowatts thermal and in the pulse mode, with reactivity insertions not to exceed 2.55$, and to receive, possess, and use special nuclear material associated with facility operation. The facility is a research reactor located on the campus of Oregon State University, in the city of Corvallis, Benton County, Oregon. The mailing address is Radiation Center, Oregon State University, 100 Radiation Center, Corvallis, Oregon 97331–5903.

II

Title 10, Section 50.64, ''Limitations on the Use of Highly Enriched Uranium (HEU) in Domestic Non-Power Reactors,'' of the *Code of Federal Regulations* (10 CFR 50.64), limits the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors) (see 51 FR 6514). The regulation, which became effective on March 27, 1986, requires that if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and use HEU fuel develop and submit to the Director of the Office of Nuclear Reactor Regulation (the Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency. The proposal should also provide a schedule for conversion, based upon the availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, the facility, and licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Paragraph 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with the protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if not all, cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202, ''Orders'').

Any person, other than the licensee, whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene meeting the requirements of 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''

III

The U.S. Nuclear Regulatory Commission (NRC) maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. On November 6, 2007, the licensee submitted its conversion proposal (ADAMS Accession No. ML080420546), which was supplemented on February 11, 2008 (ADAMS Accession No. ML080730057). The NRC staff is in the process of reviewing the conversion proposal. The licensee indicated that an order, separate from the order for converting the reactor to LEU fuel, is needed that increases the uranium-235 possession limit because of a constraint on the timing of the shipment of replacement LEU fuel. The certification of the shipping containers used to transfer the LEU fuel from the manufacturer in France to the licensee will expire in June 2008, before the NRC can issue the order for reactor conversion. Therefore, the licensee requires the receipt and possession, but not use in the reactor, of the LEU fuel at this time to allow the fuel to be received before the shipping container loses its certification. The LEU fuel contains the uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the

requirements of 10 CFR 50.64 and has determined that public health and safety and the common defense and security require the licensee to receive and possess the LEU fuel before conversion. This is necessary so that the manufacturer can ship the LEU fuel to the licensee before the shipping container certification expires, to support conversion in accordance with the schedules planned by the U.S. Department of Energy to support U.S. nonproliferation policies and by the licensee to support its academic mission.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *It is hereby ordered* that:

Amended Facility Operating License No. R–106 is modified by adding the following license condition:

2.B.(5) Pursuant to the Act and 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,'' to receive and possess but not use up to 16.30 kilograms of contained uranium-235 at enrichment less than 20 percent in the form of non-power reactor fuel.

This Order will be effective 20 days after the date of publication of this Order in the **Federal Register**.

V

Pursuant to 10 CFR 2.309, any person(s) whose interest may be affected by this proceeding, other than the licensee, and who wishes to participate as a party in the proceeding must file a written request within 20 days after the date of publication of this Order, setting forth with particularity the manner in which this Order adversely affects his or her interest and addressing the criteria set forth in 10 CFR 2.309. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC issued the E-Filing final rule on August 28, 2007 (72 FR 49139) and codified it in pertinent part at 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' Subpart B. The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least 5 days before the filing deadline, the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating, and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for a hearing through EIE. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits the document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., eastern time, Monday through Friday. The help line number is (800) 397–4209 or, locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a fair use application, participants are requested not to include copyrighted materials in their works.

If a hearing is requested, the NRC will issue an order designating the time and place of any hearing.

In the absence of any request for hearing, the provisions as specified in Section IV shall be final 20 days after the date of publication of this Order in the **Federal Register**.

In accordance with 10 CFR 51.10(d), this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to the environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the

changes would, if imposed by other than an order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 10 CFR 51.22(c)(9), no environmental assessment or environmental impact statement is required.

Detailed guidance that the NRC uses to review applications from research reactor licensees appears in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' February 1996, which can be obtained from the Commission's Public Document Room (PDR). The public may also access NUREG–1537 through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Nos. ML042430055 for part 1 and ML042430048 for part 2.

For further information, see the application from the licensee dated November 6, 2007 (ADAMS Accession No. ML080420546), as supplemented on February 11, 2008 (ADAMS Accession No. ML080730057); the NRC staff's request for additional information (ADAMS Accession No. ML080090308); and the cover letter to the licensee and the staff's safety evaluation dated April 4, 2008 (ADAMS Accession No. ML080730395), available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who have problems accessing the documents 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.*

Dated this 4th day of April, 2008.

For the Nuclear Regulatory Commission.

James T. Wiggins,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. E8–7589 Filed 4–8–08; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

April 15, 2008 Public Hearing

Time and Date: 2 p.m., Tuesday, April 15, 2008.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing Open to the Public at 2 p.m.

Purpose: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, April 11, 2008. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, April 11, 2008. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *connie.downs@opic.gov.*

Dated: April 3, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E8–7377 Filed 4–8–08; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

April 17, 2008 Board of Directors Meeting

Time and Date: Thursday, April 17, 2008, 10 a.m. (Open Portion); 10:15 a.m. (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

Matters To Be Considered

1. President's Report.
2. Approval of January 31, 2008 Minutes (Open Portion).

Further Matters To Be Considered (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee.
2. Finance Project—Jordan.
3. Finance Project—Iraq.
4. Finance Project—Afghanistan.
5. Finance Project—Turkey.
6. Finance Project—Mexico.
7. Finance Project—Africa.
8. Finance Project—Africa.
9. Approval of January 31, 2008 Minutes (Closed Portion).
10. Approval of the March 21, 2008 Minutes (Closed Portion).
11. Pending Major Projects.
12. Reports.

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: April 3, 2008.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. E8–7378 Filed 4–8–08; 8:45 am]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 27d–1 and Form N–27D–1, SEC File No. 270–499, OMB Control No. 3235–0560.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the

''Commission'') has submitted to the Office of Management and Budget a request for approval of the collections of information under the Investment Company Act of 1940 (''Act'') summarized below.

Rule 27d–1 (17 CFR 270.27d–1) is entitled ''Reserve Requirements for Principal Underwriters and Depositors to Carry Out the Obligations to Refund Charges Required by Section 27(d) and Section 27(f) of the Act.'' Form N–27D–1 (17 CFR 274.127d–1) is entitled ''Accounting of Segregated Trust Account.'' Rule 27d–1 requires the depositor or principal underwriter for an issuer of a periodic payment plan to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f). The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. A single account may be used for the periodic payment plans of multiple investment companies. Rule 27d–1(j) directs depositors and principal underwriters to make an accounting of their segregated trust accounts on Form N–27D–1, which is intended to facilitate the Commission's oversight of compliance with the reserve requirements set forth in rule 27d–1. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1. Depositors and principal underwriters must file the form once a year on or before January 31 of the year following the year for which information is presented.[1]

Rule 27d–1, which was explicitly authorized by statute, provides assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirements in rule 27d–1 enable the Commission to monitor compliance with reserve rules.

The depositor or principal underwriter of issuers must file a Form N–27D–1 annually. The Commission received zero Form N–27D–1 filings in 2007. Therefore, the total annual hour burden associated with rule 27d–1 and Form N–27d–1 is estimated to be zero hours.

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[2]

Complying with the collection of information requirements of rule 27d–1 is mandatory for depositors or principal underwriters of issuers of periodic payment plans unless they comply with the requirements in rule 27d–2 (17 CFR 270.27d–2).[3] The information provided pursuant to rule 27d–1 is public and, therefore, will not be kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 2, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7395 Filed 4–8–08; 8:45 am]

BILLING CODE 8011–01–P

[1] Instead of relying on rule 27d–1 and filing Form N–27D–1, depositors or principal underwriters for the issuers of periodic payment plans may rely on the exemption afforded by rule 27d–2. In order to comply with rule 27d–2: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements, (ii) the insurance company must satisfy certain financial criteria, and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

[2] These estimates are based on telephone interviews between the Commission staff and representatives of depositors or principle underwriters of periodic payment plan issuers.

[3] The information collection requirements for rule 27d–2 are covered in a separate **Federal Register** notice under OMB Control No. 3235–0566.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ac3–1(a), SEC File No. 270–96, OMB Control No. 3235–0151; Form TA–W (1669), SEC File No. 270–96, OMB Control No. 3235–0151.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following rule and form: Rule 17Ac3–1(a) (17 CFR 240.17Ac3–1(a)) and Form TA–W (17 CFR 249b.101).

Subsection (c)(4)(B) of Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) authorizes transfer agents registered with an appropriate regulatory agency (''ARA'') to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(4)(B) of the Exchange Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) and accompanying Form TA–W. On January 11, 2007, the Commission amended Rule 17Ac3–1(a) and accompanying Form TA–W to require that the form be filed in electronic format on EDGAR. Rule 17Ac3–1(a) provides that notice of withdrawal of registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or

conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Exchange Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately 50 TA–Ws with the Commission annually. A Form TA–W filing occurs only once, when a transfer agent is seeing deregistration. Since the form is simple and straightforward, the Commission estimates that a transfer agent need spend no more than 30 minutes to complete a Form TA–W. Therefore, the total average annual burden to covered entities is approximately 25 hours of preparation and maintenance time.

In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the filers, we estimate that approximately 30 minutes is required to complete Form TA–W, including clerical time. Approximately 80 percent of these are completed by the transfer agent or its employees and approximately 20 percent are completed by an outside filing agent. In either case, we estimate a cost of approximately $35 for each 30 minutes. Therefore, the total average annual cost burden is approximately $1,750.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: April 2, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7396 Filed 4–8–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 611, OMB Control No. 3238–0600, SEC File No. 270–540.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for in the following rule: Rule 611 (17 CFR 242.611).

On June 9, 2005, effective August 29, 2005 (*see* 70 FR 37496, June 29, 2005), the Commission adopted Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to require any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a bid or offer displayed in another market at the time of execution (a ''trade-though''), absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. Without this collection of information, respondents would not have a means to enforce compliance with the Commission's intention to prevent trade-throughs pursuant to the rule.

There are approximately 788 respondents[1] per year that will require an aggregate total of 47,280 hours to comply with this rule.[2] It is anticipated that each respondent will continue to expend approximately 60 hours annually: two hours per month of internal legal time and three hours per month of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 611. The estimated cost for an in-house attorney is $295 per hour and the estimated cost for an assistant compliance director in the securities industry is $301 per hour. Therefore the estimated total cost of compliance for the annual hour burden is as follows: [(2 legal hours × 12 months × $295) × 788] + [(3 compliance hours × 12 months × $301) × 788] = $14,117,808.[3] There are no longer start-up costs associated with Rule 611.

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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: April 2, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7397 Filed 4–8–08; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate includes nine national securities exchanges and one national securities association that trade NMS stocks. The estimate also includes the approximately 731 firms that were registered equity market makers or specialists at year-end 2006, as well as automated trading systems that operate trading systems that trade NMS stocks.

[2] Please note that the 60 Day Notice to extend the effectiveness of Rule 611 stated the annual hour burden as 36,540, which does not reflect the increase in the number of respondents; *see* Securities and Exchange Commission Proposed Collection; Comment Request, 73 FR 5600 (January 30, 2008). The one-time hour burden associated with developing the required policies and procedures is no longer applicable.

[3] The total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2007, adjusted by the SEC staff for an 1800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See* Securities Exchange Act Release No. 50870 (Dec. 16, 2004), 69 FR 77424 (Dec. 27, 2004) at notes 427, 428 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57621]

Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934

April 4, 2008.

I. Introduction

Pursuant to Rule 611(d) [1] of Regulation NMS [2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule 611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting non-convertible preferred securities from Rule 611(a) of Regulation NMS.

II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611 addresses intermarket trade-throughs of displayed quotations in NMS stocks. Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule.

The Securities Industry and Financial Markets Association (''SIFMA'') has requested that the Commission exempt non-convertible preferred securities from Rule 611(a).[5] According to the SIFMA Exemption Request, Rule 611 applies to certain non-convertible preferred securities that meet the definition of ''NMS stock.'' [6] NMS stock is defined as any security or class of securities, other than options, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.[7] The SIFMA Exemption Request notes that some non-convertible preferred securities fall within the definition of an NMS stock because transaction reports for those non-convertible preferred securities are collected, processed, and made available pursuant to the CTA/CQ Plans [8] and the Nasdaq UTP Plan.[9]

The SIFMA Exemption Request states that non-convertible preferred securities are priced like, and trade like, fixed income instruments, not common stocks.[10] In addition, the SIFMA Exemption Request notes that, as a general matter, fixed income securities currently do not fall within the definition of NMS stock. The SIFMA Exemption Request states that, in light of the similarity between non-convertible preferred securities and fixed income securities, and the many differences between non-convertible preferred securities and common stocks, Rule 611 should not apply to non-convertible preferred securities.

The SIFMA Exemption Request states that, in contrast to common stocks, the primary purpose for investing in a non-convertible preferred security is the purchase of an income stream, rather than to benefit from fluctuations in the price of the security.[11] Unlike common stocks, most non-convertible preferred securities trade based on yields, which, in turn, move in tandem with the yields of benchmark fixed income securities, such as Treasury securities. The SIFMA Exemption Request states that unless there is a credit event with respect to an issuer, the prices of non-convertible preferred securities have no correlation to price movements of an issuer's common stock. Consequently, the SIFMA Exemption Request states that non-convertible preferred securities generally are viewed as fixed income instruments by investors and securities firms.

The SIFMA Exemption Request states that, in light of their fixed income characteristics and use as an alternative to straight debt securities, non-convertible preferred securities often trade on the fixed income desks of broker-dealers, not their equity desks.[12] The SIFMA Exemption Request states that, given that Rule 611 does not apply to all non-convertible preferred securities nor generally to fixed income instruments, broker-dealers would need to make costly and time-consuming changes to their fixed income trading platforms to accommodate both traditional debt trading and the requirements of Rule 611, including the intermarket sweep order functionality.[13] The SIFMA Exemption Request states that moving the trading of non-convertible preferred securities that are NMS stocks to equity trading systems (which are Rule 611-compliant) would interfere with the presentation of fixed income investment choices to clients and trading synergies gained by trading non-convertible preferred securities with other like securities (*i.e.*, debt).

The SIFMA Exemption Request notes that the Commission, on several occasions, has recognized the differences between common stocks and non-convertible preferred securities.[14] For example, the Commission granted an exemption for non-convertible preferred securities from the requirement in Exchange Act Rule 11Ac1–1 (now Rule 602 of Regulation NMS—the ''Quote Rule'') that a member of an association that acts in the capacity of an over-the-counter market maker must provide to its association continuous two-sided quotations for any exchange-traded security in which that market maker, during the most recent calendar quarter, comprised more than 1% of the aggregate trading volume for such security as reported in the consolidated system.[15] The SIFMA Exemption Request states that the Commission provided the exemption based on representations regarding the trading activities of the requesting firms and the trading patterns of preferred stock.[16] Specifically, the requesting firms represented

> that preferred stock shares many of the characteristics of debt securities, which are exempt from the Order Execution Rules. In particular, [they] noted that prices for

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder).

[4] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[5] Letter to Nancy M. Morris, Secretary, Commission, from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, dated August 16, 2007 (''SIFMA Exemption Request'').

[6] *Id.* at 2.

[7] Rule 600(b)(46) and (47) of Regulation NMS.

[8] *See* Section VII(a) of the CTA Plan and I(j) of the CQ Plan. The CTA Plan and CQ Plan are available at *http://www.nysedata.com.*

[9] *See* Section III(B) of the Nasdaq UTP Plan; Nasdaq Rule 4200(a)(26) and (28); and *see, e.g.*, Nasdaq Rules 4420(k); 4450(h); 4310(c)(4); and 4310(c)(6)(B). The Nasdaq UTP Plan is available at *http://www.utpdata.com.*

[10] SIFMA Exemption Request at 2.

[11] *Id.*

[12] *Id.* at 3.

[13] *See* Rule 611(b)(6) and Rule 600(b)(30) of Regulation NMS (providing intermarket sweep order exception from Rule 611).

[14] SIFMA Exemption Request at 3.

[15] *See* Rule 602(b) and Rule 600(b)(73) of Regulation NMS; letter from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Roger D. Blanc, Willkie, Farr & Gallagher, Re: Exemption from, and Temporary No-Action Position Under, the Order Execution Rules for Trading in Preferred Securities, dated July 31, 1997 (''Blanc Letter'').

[16] Blanc Letter at 3.

preferred stock are generally based on yield, which in turn is based on prevailing interest rates in the debt markets, as well as perceived credit quality of the issuer and any special features of the particular preferred stock.[17]

The SIFMA Exemption Request states that, because the Commission did not apply the Quote Rule to debt securities, and preferred stock trades like debt securities, the Commission exempted preferred stock from the Quote Rule. In addition, the SIFMA Exemption Request notes that the Commission also excepted ''non-participatory preferred stocks'' from the definition of NMS stock for the purposes of Regulation ATS.[18] As a result, the order display and execution access provisions of Regulation ATS [19] do not apply to non-participatory preferred securities.

III. Discussion

The Commission has decided to exempt non-convertible preferred securities from Rule 611(a). Non-convertible preferred securities have characteristics analogous to fixed income instruments. Given these characteristics, non-convertible preferred securities typically are priced based on yield and trade more like fixed income instruments than like common stocks. Due to these similarities to fixed income instruments, non-convertible preferred securities often are handled by the fixed income desks of broker-dealers rather than equity desks. As a general matter, fixed income instruments are not NMS stocks and not subject to Rule 611. Therefore, the systems of fixed income desks of broker-dealers are not designed to comply with Rule 611. In addition, if broker-dealers were to shift trading of non-convertible preferred securities to their equity desks, which have systems designed to comply with Rule 611, investors would be less able to benefit from the experience of broker-dealer personnel with expertise in trading in debt and debt-like securities. In sum, the exemption will promote efficiency because the benefits of applying Rule 611(a) to non-convertible preferred securities would not justify the additional costs of compliance, including broker-dealer costs to program systems to comply with Rule 611.

The Commission notes that it has previously recognized the similarities between non-convertible preferred securities and fixed income instruments, and, in doing so, has treated non-convertible preferred securities differently than common stock. In 1997, the Commission exempted non-convertible preferred securities from certain requirements in the Quote Rule due to the similarity of its trading patterns with debt securities.[20] In addition, the Commission excepted ''non-participatory preferred stocks'' from the definition of NMS stock in Regulation ATS.[21] The Commission believes that its decision to exempt non-convertible preferred securities from Rule 611(a) is consistent with its prior actions.

The Commission also believes that the exemption for non-convertible preferred securities is consistent with the protection of investors in such securities. The exemption applies solely to Rule 611(a). Transactions in non-convertible preferred securities will remain subject to all other applicable regulatory requirements.

For the foregoing reasons, the Commission finds that granting the foregoing exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that non-convertible preferred securities are exempted from Rule 611(a) of Regulation NMS.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7445 Filed 4–8–08; 8:45 am]

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[17] *Id.*

[18] SIFMA Exemption Request at 4.

[19] 17 CFR 242.301(b)(3).

[20] *See* Blanc Letter.

[21] 17 CFR 242.300(d) and (g).

[22] 17 CFR 200.30–3(a)(82).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57620]

Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934

April 4, 2008.

I. Introduction

Pursuant to Rule 611(d)[1] of Regulation NMS [2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule 611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] On August 31, 2006, the Commission granted an exemption for qualified contingent trades from Rule 611(a) (''QCT Exemption'').[4] As discussed below, the Commission is modifying the QCT Exemption to remove the minimum size limitation that was included in the exemption as originally granted.

II. Background

The Commission adopted Regulation NMS in June 2005.[5] Rule 611 addresses intermarket trade-throughs of quotations in NMS stocks.[6] The Rule applies only to quotations that are immediately accessible through automatic execution. On August 31, 2006, the Commission granted the QCT Exemption for any trade-throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted NMS Stock Transaction) that are components of a qualified contingent trade.[7] In the QCT Exemptive Order, the Commission defined a ''qualified contingent trade'' as a transaction consisting of two or more component orders, executed as agent or principal, where:

(1) At least one component order is in an NMS stock;

(2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent;

(3) the execution of one component is contingent upon the execution of all other components at or near the same time;

(4) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined at the time the contingent order is placed;

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder).

[4] Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (''QCT Exemptive Order'').

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[6] An ''NMS stock'' means any security or class of securities, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(46) and (47).

[7] QCT Exemptive Order, 71 FR at 52831.

(5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled;[8]

(6) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade;[9] and

(7) the Exempted NMS Stock Transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least $200,000 (''Size Condition'').[10]

The Chicago Board Options Exchange, Inc. (''CBOE'') has requested that the Commission modify the QCT Exemption by removing the Size Condition.[11] According to the CBOE Exemption Request, market participants find contingent trades to be an efficient means to effect coupled executions in an option and the underlying stock based on the pricing spread between the two instruments. CBOE notes that a large percentage of these contingent trade orders end up unexecuted due to a variety of factors. CBOE states that one of the factors impeding the execution of contingent trades is the Size Condition. Contingent trades involving a stock size under 10,000 shares (or $200,000) cannot be executed if the stock leg would trade through an automated trading center's protected quote.[12] CBOE notes that, due to the need to price the trade based on the spread between the option and stock leg more so than on current market quotations for the stock, a contingent trade of a modest size may still have the stock leg priced outside of a protected quotation. In CBOE's experience, the Size Condition is a factor that will continue to make it more difficult to complete smaller-sized contingent trades. CBOE believes that this impediment has a greater impact on individual investors who want to effect a buy-write transaction of modest size than on institutional investors, who tend to trade in much larger share amounts.[13]

CBOE states that, if the Size Condition is removed, the other conditions—conditions (1) though (6) above—in the QCT Exemption would continue to ensure that eligible contingent trades are not used in an abusive manner to avoid compliance with Rule 611. CBOE believes that the Commission primarily focused on these conditions when it found that the exemption was narrowly drawn to encompass only those trades most in need of relief to remain part of a viable trading strategy and where execution of the NMS stock component at a trade-through price is reasonably necessary to effect the contingent trade. CBOE notes that the Commission believed that conditions (1) through (6) of the exemption require a close connection between any Exempted NMS Stock Transaction and the other components of a qualified contingent trade, and that this close connection should both significantly limit the number of Exempted NMS Stock Transactions and help assure that the exemption applies only to those trades most in need of flexibility to be executed efficiently. Finally, CBOE believes that a key rationale behind the Qualified Contingent Trade Exemption is that contingent trades are not priced based on current market quotations, but rather the pricing relationship between two related instruments. CBOE believes that the rationale holds as true for a small contingent trade that meets all the requirements of the exemption as it does for a large trade. In this regard, CBOE notes that the Commission recently approved a proposed rule change of the options exchanges to amend the definition in the Intermarket Linkage Plan of ''complex trade'', which is exempt from trade through liability, to include stock-option trades.[14] CBOE states that the rule change does not set a size minimum for a stock-option trade to be exempt from trade through liability.[15]

CBOE therefore believes that the QCT Exemption, even without the Size Condition, would continue to be in the public interest and consistent with the protection of investors. In this regard, CBOE believes that the proposed modification to the exemption would not change the many benefits that contingent trades provide to the market. At the same time, CBOE states that the remaining conditions from the exemption will continue to ensure that the exemption is narrowly drawn to prevent evasion of Rule 611 and that the exemption is limited to a small number of transactions. CBOE believes that removing the Size Condition will not result in a large increase in the number of transactions being exempted from Rule 611 because smaller contingent trades represent a very small portion of the overall amount of stock executions in listed stocks.[16]

III. Discussion

After careful consideration and for the reasons discussed in this order, the Commission hereby modifies the QCT Exemption by removing the Size Condition. A ''qualified contingent trade'' now is defined as a transaction consisting of two or more component orders, executed as agent or principal, where:

(1) At least one component order is in an NMS stock;

(2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent;

(3) the execution of one component is contingent upon the execution of all other components at or near the same time;

(4) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined at the time the contingent order is placed;

(5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled;[17] and

(6) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as

[8] Transactions involving securities of participants in mergers or with intentions to merge that have been announced would meet this aspect of the exemption. Transactions involving cancelled mergers, however, would constitute qualified contingent trades only to the extent they involve the unwinding of a pre-existing position in the merger participants' shares. Statistical arbitrage transactions, absent some other derivative or merger arbitrage relationship between component orders, would not satisfy this element of the definition of a qualified contingent trade.

[9] A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies.

[10] *See* 17 CFR 242.600(b)(9) (defining ''block size'' with respect to an order as at least 10,000 shares or $200,000 in market value).

[11] Letter to Nancy M. Morris, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, CBOE, dated November 28, 2007 (''CBOE Exemption Request'').

[12] *See* CBOE Exemption Request at 3.

[13] *Id.* A buy-write transaction, for example, involves the execution of a stock transaction and a corresponding options transaction.

[14] *See* Securities Exchange Act Release No. 56761 (November 7, 2007), 72 FR 64094 (November 14, 2007).

[15] CBOE Exemption Request at 4.

[16] *Id.*

[17] Transactions involving securities of participants in mergers or with intentions to merge that have been announced would meet this aspect of the exemption. Transactions involving cancelled mergers, however, would constitute qualified contingent trades only to the extent they involve the unwinding of a pre-existing position in the merger participants' shares. Statistical arbitrage transactions, absent some other derivative or merger arbitrage relationship between component orders, would not satisfy this element of the definition of a qualified contingent trade.

a result of the other components of the contingent trade.[18]

The Commission notes that a trading center must meet all of the foregoing elements of a qualified contingent trade to qualify for the exemption. The exemption is not restricted to dealers or the over-the-counter market. It can be used by any trading center that meets the terms of the exemption.

The Commission recognizes that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and equity derivatives such as options. Those who engage in contingent trades can benefit the market as a whole by studying the relationships between the prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value. Contingent trades therefore are one example of a wide variety of trades that contribute to the efficient functioning of the securities markets and the price discovery process.

As discussed in the QCT Exemptive Order,[19] the Commission believes that qualified contingent trades potentially could become too risky and costly to be employed successfully if they were required to meet the trade-through provisions of Rule 611. Absent an exemption, participants in contingent trades often would need to use the Rule's intermarket sweep order exception and route orders to execute against protected quotations with better prices than an NMS stock component of the contingent trade. Any executions of these routed orders could throw the participants ''out of hedge'' and necessitate additional transactions in an attempt to correct the imbalance. As a practical matter, the difficulty of maintaining a hedge, and the risk of falling out of hedge, could dissuade participants from engaging in contingent trades, or at least raise the cost of such trades. The elimination or reduction of this trading strategy potentially could remove liquidity from the market. The Commission therefore determined to exempt qualified exempted trades from Rule 611.[20]

To minimize the effect of the QCT Exemption on the objectives of Rule 611, it was narrowly drawn to encompass only those trades most in need of relief to remain part of a viable trading strategy and where execution of the NMS stock component at a trade-through price is reasonably necessary to effect the contingent trade. In particular, elements (1) through (6) of the exemption, as set forth above, require a close connection between any Exempted NMS Stock Transaction and the other components of a qualified contingent trade. This close connection both significantly limits the number of Exempted NMS Stock Transactions and helps assure that the exemption applies only to those trades most in need of flexibility to be executed efficiently. For example, the execution of one component of the transaction must be contingent upon the execution of all other components at or near the same time, and the Exempted NMS Stock Transaction must be fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.[21] In addition, there must be a specified relationship between the instruments involved in the component orders. The component orders must bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled.[22] The QCT Exemption does not apply to contingent trades, such as statistical arbitrage transactions, if their components do not involve instruments with a specified relationship.

In the QCT Exemptive Order,[23] the Commission noted that the Size Condition further limited the QCT Exemption to those transactions where an exemption is likely to be most needed to facilitate the trading strategies of informed customers. As a national securities exchange with extensive experience in executing contingent options and stock transactions, CBOE notes that the Size Condition in practice has served to inhibit retail investors from engaging in buy-write transactions of modest size.[24] This type of options strategy can be suitable for a broad range of investors, and the Commission does not wish unnecessarily to inhibit retail investors from engaging in useful investment strategies that are available to those who trade in larger size. In addition, there are existing duties that brokers owe their customers, such as suitability and best execution of contingent stock and options transactions. The Commission therefore has decided to remove the Size Condition from the QCT Exemption to enable the use of a wider range of options strategies for retail investors. In this way, buy-write strategies, as well as other contingent trade strategies, will not be hampered by the terms of the QCT Exemption and will be more readily available to those for whom such strategies are useful and appropriate. In addition, removing the Size Condition, by expanding the range of investors who can take advantage of the QCT Exemption, potentially could promote competition among trading centers.

The Commission does not believe that removing the Size Condition will result in the use of contingent trades to evade the requirements of Rule 611. Elements (1) through (6) of the exemption, as set forth above, are sufficient to encompass only those trades most in need of relief to remain part of a viable trading strategy and where execution of the NMS stock component at a trade-through price is reasonably necessary to effect the contingent trade.

Accordingly, the QCT Exemption, as modified, should provide appropriate relief in those circumstances where compliance with Rule 611 could be most difficult as a practical matter, but also is limited to a small number of transactions that should not unduly undermine the objectives of Rule 611.[25] In this regard, the Commission notes that the exemption, as discussed in the QCT Exemptive Order, is premised on an expectation that qualified contingent trades will continue to be used for essentially the same valid trading purposes as they are currently. A material change in the nature or frequency of such trades could cause the Commission to reconsider the terms of the exemption.

For the foregoing reasons, the Commission finds that removing the Size Condition from the QCT Exemption

[18] A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies.

[19] 71 FR at 52831.

[20] *Id.*

[21] The requirement that an Exempted NMS Stock Transaction be fully hedged should significantly limit the scope of the exemption. For example, a contingent trade would not qualify for the exemption if an NMS stock transaction was the purchase or sale of 50,000 shares, and the only other component was the purchase or sale of a small quantity of options on the NMS stock. A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies.

[22] Transactions involving cancelled mergers would be qualified contingent trades only to the extent that they involve the unwinding of a pre-existing position in the merger participants' shares.

[23] 71 FR at 52831.

[24] CBOE Exemption Request at 3.

[25] *See* CBOE Exemption Request at 4 (representing that removal of the Size Condition will not result in a large increase in the number of transactions being exempted from Rule 611 because smaller contingent trades represent a very small portion of the overall amount of stock executions in listed stocks).

is necessary and appropriate in the public interest, and is consistent with the protection of investors.

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that the Size Condition is removed from the QCT Exemption.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7446 Filed 4–8–08; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(82).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57611; File No. SR–NYSE–2008–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Exchange Rule 36 (Communications Between Exchange and Member's Offices) To Make Permanent an Existing Portable Phone Pilot

April 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2008, the New York Stock Exchange LLC (''NYSE'' 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. On March 27, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On April 2, 2008, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] 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

The Exchange is proposing to amend Exchange Rule 36 (Communications Between Exchange Member's Offices) to make permanent the existing portable phone pilot (the ''Pilot'').[5]

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. 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

Through this rule change, the Exchange seeks to amend Exchange Rule 36 to allow Floor brokers and Registered Competitive Market-Makers (''RCMMs'')[4] to use Exchange authorized and provided portable phones on the Exchange Floor, provided certain specified conditions are met. Such usage has been permitted on a pilot basis. The current Pilot expires on April 30, 2008, and the NYSE seeks to have the amendment to Exchange Rule 36 made permanent.

Background

The Commission originally approved the Pilot to be implemented for a six-month period[5] beginning no later than June 23, 2003.[6] Since the inception of the Pilot, the Exchange has extended the Pilot nine times, with the current Pilot set to expire on April 30, 2008.[7] In 2006, the Exchange incorporated RCMMs into the Pilot and subsequently amended the Pilot to allow RCMMs to use an Exchange authorized and provided portable phone on the Exchange Floor to call to and receive calls from their booths on the Exchange Floor.[8]

Exchange Rule 36 governs the establishment of telephone or electronic communications between the Exchange Floor and any other location. Prior to the Pilot, Exchange Rule 36 prohibited the use of portable phone communications between the Exchange Floor and any off-Floor location. The only approved communication by Floor brokers between the Exchange Floor and an off-Floor location prior to the Pilot was by means of a telephone located at a broker's booth. Communications often involved a customer calling a broker at the booth for ''market look'' information. Prior to the Pilot, a broker could not use a portable phone in a trading Crowd at the point of sale to speak with a person located off the Exchange Floor.

Under the Pilot, sections .21 and .22 of Exchange Rule 36 delineate the conditions under which Floor brokers and RCMMs, respectively, are allowed to use an Exchange authorized and provided portable phone on the Exchange Floor.[9] Currently, under the

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange included the rule text of Exchange Rule 36 as originally approved by the Commission as a pilot and subsequently amended to include Registered Competitive Market Makers (''RCMMs''). *See* notes 6 and 8 *infra.* Amendment No. 1 replaced the original filing in its entirety. *See also* note 4 *infra.*

[4] Amendment No. 2 replaced Amendment No. 1 in its entirety. In Amendment No. 2, the Exchange included an inadvertently omitted portion of the text of Exchange Rule 36. Amendment No. 2 amends Exhibit 5 of the 19b–4 so that it accurately reflects the existing portable phone pilot and the text of Exchange Rule 36 as it will appear upon permanent approval of the pilot.

[5] *See also* note 9 *infra.* Member Education Bulletins (''MEBs'') and acknowledgment forms are part of the rule proposal.

[4] *See* Exchange Rule 107A, which defines and governs the registration and dealings of RCMMs.

[5] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11).

[6] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19) (delaying the implementation date for portable phones from on or about May 1, 2003, to no later than June 23, 2003).

[7] *See* Securities Exchange Act Release Nos. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR–NYSE–2003–38) (extending the Pilot for an additional six months ending on June 16, 2004); 49954 (July 1, 2004), 69 FR 41323 (July 8, 2004) (SR–NYSE–2004–30) (extending the Pilot for an additional five months ending on November 30, 2004); 50777 (December 1, 2004), 69 FR 71090 (December 8, 2004) (SR–NYSE–2004–67) (extending the Pilot for an additional four months ending March 31, 2005); 51464 (March 31, 2005), 70 FR 17746 (April 7, 2005) (SR–NYSE–2005–20) (extending the Pilot for additional four months ending July 31, 2005); 52188 (August 1, 2005), 70 FR 46252 (August 9, 2005) (SR–NYSE–2005–53) (extending the Pilot for an additional six months ending January 31, 2006); 53277 (February 13, 2006), 71 FR 8877 (February 21, 2006) (SR–NYSE–2006–03) (extending the Pilot for an additional six months ending July 31, 2006); 54276 (August 4, 2006), 71 FR 45885 (August 10, 2006) (SR–NYSE–2006–55) (extending the Pilot for an additional six months ending January 31, 2007); 55218 (January 31, 2007), 72 FR 6025 (February 8, 2007) (SR–NYSE–2007–05) (extending the Pilot for an additional twelve months ending January 31, 2008); and 57249 (January 31, 2008), 73 FR 7024 (February 6, 2008) (SR–NYSE–2008–10) (extending the Pilot for an additional three months ending April 30, 2008).

[8] *See* Securities Exchange Act Release Nos. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR–NYSE–2005–80) and 54215 (July 26, 2006), 71 FR 43551 (August 1, 2006) (SR–NYSE–2006–51).

[9] *See* MEBs 2005–20 (November 28, 2005) and 2005–23 (December 2, 2005). MEBs describe the conditions for the use of a portable phone by Floor brokers and RCMMs, the acknowledgement procedure, and the rule text. These MEBs were previously filed as exhibits with the Commission in connection with the operation of the Pilot. *See* Securities Exchange Act Release No. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR–NYSE–2005–80). Revised MEBs will be sent to

Pilot, with the approval of the Exchange, a Floor broker is permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as ''market look'' observations as historically have been routinely transmitted from a broker's booth location.

Both incoming and outgoing calls are allowed, provided the requirements of all other Exchange rules have been met. A Floor broker is not permitted to represent and execute any order received as a result of such voice communication unless the order is first properly recorded by the member and entered into the Exchange's Front End Systemic Capture (FESC) electronic database.[10] In addition, Exchange Rules require that Floor brokers receiving orders from the public over portable phones must be properly qualified to engage in such direct access business under Exchange Rules 342 and 345, among others.[11]

It is impermissible for Floor brokers to use call-forwarding or conference calling. Accordingly, Exchange authorized and provided portable phones used by Floor brokers do not have call forwarding or conference calling capabilities, and Floor brokers and their member organizations must have procedures designed to deter anyone calling their portable phone from using caller ID block or attempting to conceal the phone number from which the call is being made. Moreover, members and member organizations must make and retain records which reflect compliance with these procedures.

The Pilot also allows RCMMs to use an Exchange authorized portable phone solely to call and receive calls from their booths on the Exchange Floor, to communicate with their or their member organizations' off-Floor office, and to communicate with the off-Floor office of their clearing member organization to enter off-Floor orders and to discuss matters related to the clearance and settlement of transactions, provided the off-Floor office uses a wired phone line for these discussions. RCMMs and their or their member organization's off-Floor offices may not use portable phones to transmit to the Exchange Floor orders for the purchase or sale of securities by public customers or any other agency business.[12] For both RCMMs and Floor brokers, use of a portable phone on the Exchange Floor other than one authorized and provided by the Exchange is prohibited.

It is impermissible for RCMMs, their booth personnel, their member organization's off-Floor office, and their clearing member organization's off-Floor office to use call-forwarding or conference calling. Accordingly, Exchange authorized and provided portable phones used by RCMMs do not have call forwarding or conference calling capabilities and booth phones used to make calls to and receive calls from RCMMs are prohibited from having call forwarding or conference calling features enabled. RCMMs and their member organizations must implement procedures designed to deter their or their member organization's off-Floor office and the off-Floor office of their clearing member organization calling their portable phone from using caller ID block or any other means designed to conceal the phone number from which the call is being made.

Use of the portable phone by Floor brokers and RCMMs pursuant to sections .21 and .22 of Exchange Rule 36 must comply with all other rules, policies, and procedures of both the federal securities laws and the Exchange, including the record retention requirements, as set forth in Exchange Rule 440 and SEC Rules 17a–3 and 17a–4. Further, every Floor broker and RCMM must sign a written agreement consenting to specified terms of usage in connection with the operation of the Pilot and their use of the Exchange authorized and provided portable phones.[13]

Specialists are subject to separate restrictions in Exchange Rule 36 on their ability to engage in communications from the specialist post to an off-Floor location.[14] The amendments to Exchange Rule 36 proposed in this filing will not apply to specialists, who would continue to be prohibited from communicating from the post to upstairs trading desks or customers.[15]

Pilot Program Results

Currently, there are approximately 400 portable phone subscribers.[16] For a sample week of October 15 through October 19, 2007, an average of 2,518 calls/day were outgoing calls from portable phones issued to Floor brokers and RCMMs. An average of 960 calls/day were incoming calls to the portable phones. Of the outgoing calls from portable phones, an average of 1,026 calls/day were calls to the booth by Floor brokers and RCMMs, and 1,492 calls/day were calls by RCMMs to the upstairs offices of their member organization and their clearing member organization and calls of Floor brokers. Approximately 41% of the outgoing calls from portable phones were calls to the booth by Floor brokers and RCMMs.

Of the 960 average incoming calls/day received, an average of 337 calls/day were calls to RCMMs from the upstairs offices of their member organization and their clearing member organization and calls to Floor brokers. An average of 623 calls/day were calls received from the booth. Thus, approximately 65% of all incoming calls received were from the

all Floor brokers and RCMMs utilizing portable phones pursuant to Exchange Rule 36.

[10] *See* Exchange Rule 123(e). *See also* Securities Exchange Act Release Nos. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25) and 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[11] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, see Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available at *http://www.nyse.com*), and 91–25 (July 8, 1991).

[12] Allowing RCMMs acting as Floor brokers to use portable phones would involve further discussions with the Commission and would be the subject of a separate filing with the Commission.

[13] Floor brokers and RCMMs agree to comply with sections .20, .21, and .22 of Exchange Rule 36, all other rules, policies, and procedures of both federal securities laws and the Exchange, including the record retention requirements of Exchange Rule 440 and Rules 17a–3 and 17a–4 under the Act, and acknowledge that the Exchange has the right to request from their Exchange authorized portable phone service provider any records relating to incoming and outgoing calls that NYSE Regulation, Inc. deems necessary. Floor brokers additionally agree that to the extent they are aware that a customer or any other incoming caller is using a caller ID block, the Floor broker will request in writing that the customer/caller disable such block when calling the Floor broker. Such written request must be documented and a copy of the same retained. RCMMs acknowledge that they may only call and receive calls from the locations delineated in section .22 of Exchange Rule 36. RCMMs additionally agree to disable the functionality that allows call-forwarding, conference calling, caller ID block, or any other means to conceal the phone number from which the call is being made.

[14] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[15] Exchange Rule 36.30 provides that, with the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection shall not be used for the purpose of transmitting to the Exchange Floor orders for the purchase or sale of securities, but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm, or through a member (on the Exchange Floor) of an options or futures exchange.

[16] This data includes both Floor brokers and RCMMs.

booth and the remaining 35% of incoming calls received were calls to RCMMs from the upstairs offices of their member organization and their clearing member organization and calls to Floor brokers.[17]

The Exchange believes that the Pilot is operating successfully in that there is a reasonable degree of usage of portable phones. Based on the Pilot, the Exchange has not identified any additional significant regulatory issues to report at this time. Moreover, there have been no administrative or technical problems, other than routine telephone maintenance issues, that have resulted from the operation of the Pilot over the past few months.

Proposal To Make Portable Phone Pilot Permanent

The Exchange proposes to make permanent the amendment to Exchange Rule 36 permitting a Floor broker and an RCMM to use an Exchange authorized and issued portable phone on the Exchange Floor.

The permanent incorporation of the Pilot's provisions will enable the Exchange to continue to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal and execution of orders, and provide an enhanced level of service to customers in an increasingly competitive environment. In particular, by enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable phone, the proposed rule change will continue what has become a more expeditious and direct free flow of information than the circuitous manner in which information was transmitted prior to the Pilot.

The Exchange believes that the successful operation of the Pilot since 2003 for Floor brokers with the inclusion of RCMMs in 2006 amply demonstrates that the Pilot facilitates communication on the Exchange Floor for both Floor brokers and RCMMs without any corresponding drawbacks. Therefore, the Exchange believes it is appropriate to amend Exchange Rule 36 to make permanent the existing Pilot.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[18] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The amendment to Exchange Rule 36 supports the mechanism of free and open markets by providing a means for increased communication by Floor brokers and RCMMs to and from the Exchange Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–20 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–NYSE–2008–20. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–20 and should be submitted on or before April 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7443 Filed 4–8–08; 8:45 am]

BILLING CODE 8011–01–P

[17] The Exchange has received records of incoming and outgoing telephone calls from January 31, 2007, through January 31, 2008, for Floor brokers and RCMMs and will continue to receive records of such telephone calls on a monthly basis.

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6169]

Determination Under Section 608 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) With Respect to Pakistan

Pursuant to the authority vested in me as Secretary of State, including by Section 608 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161), and Executive

Order 12163, as amended, I hereby determine and certify that subsequent to the termination of assistance to the Government of Pakistan after a military coup on October 12, 1999, a democratically elected government has taken office in Pakistan as of March 25, 2008, permitting immediate resumption of assistance.

I direct that this Determination be published in the **Federal Register** and transmitted to the Congress.

Dated: March 28, 2008.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E8–7477 Filed 4–8–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6160]

Determination on Provision of Assistance to Comoros

Pursuant to Section 451 of the Foreign Assistance Act of 1961, as amended (the ''Act'') (22 U.S.C. 2261), and Section 1–100(a)(1) of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $1 million in Fiscal Year 2008 funds available under Chapter 6 of Part II of the Act, in order to provide, for any unanticipated contingencies, assistance authorized by Part I of the Act (which is deemed to include references to Chapter 6 of Part II) for Comoros.

This determination shall be reported to Congress promptly and published in the **Federal Register**.

Dated: March 27, 2008.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E8–7470 Filed 4–8–08; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC 187–1B]

Flight Standards Service Schedule of Charges Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of revised Advisory Circular (AC) 187–1B, Flight Standards Service Schedule of Charges Outside the United States, which transmits an updated schedule of charges for services of FAA Flight Standards aviation safety inspectors outside the United States. The FAA updated this advisory circular in accordance with the procedures listed in Title 14 Code of Federal Regulations part 187, appendix A.

DATES: This AC was effective on March 28, 2008.

ADDRESSES: *How to obtain copies:* A copy of this publication may be downloaded from: *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/2942D01E37AF962A8625741A007210A3?OpenDocument&Highlight=187*.

FOR FURTHER INFORMATION CONTACT: Dr. Geoff McIntyre, Flight Standards Service, AFS–50, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 385–8139; e-mail: *geoff.mcintyre@faa.gov*.

Issued in Washington, DC on April 1, 2008.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. E8–7394 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–15]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions 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 any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 29, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0329 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.
- *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.

SUPPLEMENTARY INFORMATION: 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).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, 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 April 3, 2008.

Eve Adams,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2008–0329.

Petitioner: Embraer Empresa Brasileira de Aeronautica, S.A.

Section of 14 CFR Affected: 14 CFR 121.344(d), (e), and (f).

Description of Relief Sought: To permit the use of the Embraer EMB–145 series airplane in operations under part 121 with a flight data recorder system that does not fully meet the data resolution requirements.

[FR Doc. E8–7389 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–14]

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 21, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0332 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 April 3, 2008.

Eve Adams,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0332.

Petitioner: Inter American University of Puerto Rico.

Section of 14 CFR Affected: 14 CFR 61.129(a)(4) and part 141, Appendix D, paragraph 5(a).

Description of Relief Sought: To allow Inter American University of Puerto Rico pilot candidates to satisfy the requirements of conducting a cross-country solo flight by performing the duties of pilot-in-command with an authorized instructor onboard.

[FR Doc. E8–7393 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Mobile Downtown Airport, Mobile, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Mobile Airport Authority to waive the requirement that a 46.75-acre parcel of surplus property, located at the Mobile Downtown Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before May 9, 2008.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Hughes, Airport Director, at the following address: P.O. Box 88004, Mobile, Alabama 36608–0004.

FOR FURTHER INFORMATION CONTACT: William Schuller, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9883. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Mobile Airport Authority to release 46.75 acres of surplus property at the Mobile Downtown Airport. The property will be exchanged within the Mobile Airport Authority for non-obligated land better suited for aeronautical purposes. The property will be held by the Mobile Airport Authority and sold in part or in whole to commercial or industrial users. The property is located along Mobile Bay and is separated from airside operations by existing, non-aeronautical development. The airport will realize equivalent fair market value in the exchange of this property.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the offices of the Mobile Airport Authority, Mobile, Alabama.

Issued in Jackson, Mississippi on April 1, 2008.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. E8–7244 Filed 4–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Savings Associations Holding Company Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 9, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov* or (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Savings Associations Holding Company Application.

OMB Number: 1550–0015.

Form Number: OTS Form H–(E).

Description: OTS analyzes each holding company application to determine whether the applicant meets the statutory criteria set forth in Section 10(e) of the Act to become a savings and loan holding company. The forms are reviewed for adequacy of answers to items and completeness in all material respects.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Federal Government.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Estimated Burden Hours per Response: 500 hours.

Estimated Frequency of Response: Other; When seeking regulatory activity request.

Estimated Total Burden: 25,000 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 1, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–7403 Filed 4–8–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Deposits and Savings Accounts by Office

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 9, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov* or (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Deposits and Savings Accounts by Office.

OMB Number: 1550–0004.

Form Number: OTS Form 248.

Description: This survey provides the only financial information by individual branch offices for OTS-regulated institutions and is comparable to data collected by the FDIC for banks. The data is essential to determine market shares of institutions in local market areas, and is used for anti-competitive analysis by OTS, FDIC, FRB, OCC and DOJ. The information is also used for small geographic area analysis by OTS staff, other federal agencies, financial institutions and financial consultants. The information is collected annually through a completely automated process.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Federal Government.

Estimated Number of Respondents: 816.

Estimated Number of Responses: 816.

Estimated Burden Hours per Response: 30 minutes.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 408 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 4, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–7457 Filed 4–8–08; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
April 9, 2008

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 385

Commercial Driver's License Testing and Commercial Learner's Permit Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 385

[Docket No. FMCSA–2007–27659]

RIN 2126–AB02

Commercial Driver's License Testing and Commercial Learner's Permit Standards

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to revise the commercial driver's license (CDL) knowledge and skills testing standards, and to require new Federal minimum standards for States to issue commercial learner's permits (CLPs). FMCSA also proposes that a CLP holder meet virtually the same requirements as those for a CDL holder. This means that a driver holding a CLP would be subject to the same driver disqualification offenses as apply to a CDL holder. This NPRM responds to section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act). The purpose of this proposal is to enhance safety by ensuring that only qualified drivers are allowed to operate commercial motor vehicles on our nation's highways.

DATES: Please submit comments regarding this NPRM by June 9, 2008.

ADDRESSES: Please submit comments by only one of the following methods—Internet, facsimile, regular mail, or hand-deliver. Please do not submit the same comments multiple times or by more than one method. The Federal eRulemaking portal is the preferred method for submitting comments, and we urge you to use it.

- *Federal eRulemaking Portal:* Search the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov.* In the *Comment or Submission* section, type Docket ID Number ''FMCSA–2007–27659'', select ''Go'', and then click on ''Send a Comment or Submission.'' You will receive a tracking number when you submit a comment.
- *Mail, Courier, or Hand-Deliver:* U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Telefax:* (202) 493–2251.
- *Docket:* To read all comments and background material in the docket, go to *http://www.regulations.gov* and type ''FMCSA–2007–27659''.

Privacy Act: Regardless of the method used for submitting comments, all comments will be posted without change to the Federal Docket Management System (FDMS) at *http://www.regulations.gov.* Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at the URL *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366–5014 or e-mail *robert.redmond@dot.gov.* Office hours are from 8 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows:

I. Legal Basis for the Rulemaking
II. Background
A. Summary of This NPRM
B. History
III. General Discussion of the Issues and Proposals
1. Strengthen Legal Presence Requirement
2. Social Security Number Verification Before Issuing CLP or CDL
3. Surrender of CLP, CDL, and Non-CDL Documents
4. CDL Testing Requirements for Out-of-State Driver Training School Students
5. State Reciprocity for CLPs
6. Minimum Uniform Standards for Issuing a CLP
a. Passing the General Knowledge Test To Obtain a CLP
b. Requiring the CLP To Be a Separate Document From the CDL or Non-CDL
c. CLP Document Should Be Tamperproof
d. Recording the CLP in CDLIS
7. Maximum Initial Validity and Renewal Periods for CLP and CDL
a. Initial Validity and Renewal Periods for CLP
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8. Establish a Minimum Age for CLP
9. Preconditions To Taking the CDL Skills Test
10. Limit Endorsements on CLP to Passenger (P) Only
11. Methods of Administering CDL Tests
12. Update Federal Knowledge and Skills Test Standards
13. New Standardized Endorsements and Restriction Codes
14. Previous Driving Offenses by CLP Holders and CLP Applicants
a. Holders of a CLP
b. Applicants for a CLP
15. Motor Carrier Prohibitions
16. Incorporate CLP-Related Regulatory Guidance Into Regulatory Text
17. Incorporate SAFE Port Act Provisions
IV. Section-by-Section Discussion of the Proposals
A. Proposed Changes to Part 383
1. Section 383.5, Definitions
2. Section 383.9, Matter Incorporated by Reference
3. Section 383.23, Commercial Driver's License
4. Section 383.25, Commercial Learner's Permit
5. Section 383.37, Employer's Responsibilities
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7. Section 383.71, Driver Application Procedures
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9. Section 383.73, State Procedures
10. Section 383.75, Third Party Testing
11. Section 383.77, Substitute for Driving Skills Test
12. Section 383.79, Skills Testing of Out-of-State Students
13. Section 383.93, Endorsements
14. Section 383.95, Air Brake Restrictions
15. Section 383.110, General Requirement
16. Section 383.111, Required Knowledge
17. Section 383.113, Required Skills
18. Sections 383.115, Requirements for Double/Triple Trailers Endorsement, 383.117, Requirements for Passenger Endorsement, 383.119, Requirements for Tank Vehicle Endorsement, 383.121, Requirements for Hazardous Materials Endorsement, and 383.123, Requirements for a School Bus Endorsement
19. Appendix to Subpart G
20. Section 383.131, Test Manuals
21. Section 383.133, Test Methods
22. Section 383.135, Passing knowledge and Skills Tests
23. Subpart J, Commercial Driver's License Document
24. Section 383.155, Tamperproofing Requirements
B. Proposed Changes to Part 384
1. Sections 384.105, Definitions; 384.204, CDL Issuance and Information; 384.205, CDLIS Information; 384.207, Notification of Licensing; 384.208, Notification of Disqualification; 384.209, Notification of Traffic Violations; 384.210, Limitations on Licensing; 384.212, Domicile Requirement; Section 384.214, Reciprocity; 384.220, Problem Driver Pointer System Information; 384.225, Record of Violation; 384.226, Prohibition on Masking Convictions; 384.231, Satisfaction of State Disqualification Requirement; and 384.405, Decertification of State CDL Program
2. Section 384.206, State Record Checks
3. Section 384.211, Surrender of Old Licenses

4. Section 384.217, Drug Offenses
5. Section 384.227, Record of Digital Image or Photograph
6. Section 384.228, Examiner Training and Record Checks
7. Section 384.229, Skills Test Examiner Auditing and Monitoring
8. Section 384.301, Substantial Compliance—General Requirements
C. Proposed Changes to Part 385
V. Regulatory Analyses and Notices

I. Legal Basis for the Rulemaking

This rulemaking is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935 (MCA) (Chapter 498, 49 Stat. 543, 49 U.S.C. 31502). It is also based on section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, at 1734, 49 U.S.C. 31302, 31308, and 31309); and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347, 120 Stat. 1884, at 1944).

The CMVSA required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for the issuance of commercial driver's licenses (CDLs) by the States and for information to be contained on each such license (49 U.S.C. 31305, 31308). The CMVSA also authorized the Secretary to adopt regulations for a learner's permit (49 U.S.C. 31305(b)(2)). Paragraph (c) of 49 CFR 383.23 addresses the learner's permit by ratifying the States' regulations on this subject, provided they comply with certain Federal requirements. This NPRM is proposing a Federal requirement for a commercial learner's permit (CLP) as a pre-condition for issuing a CDL and proposing various other changes to enhance the CDL program. A summary of the proposed changes organized by section number appears below in the Section-by-Section Discussion of the Proposals.

The MCSA conferred authority to regulate drivers, motor carriers, and commercial motor vehicles (CMVs). It required the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This NPRM, like the CDL regulations, is based in part on the requirements of 49 U.S.C. 31136(a)(1) and (2) that CMVs be ''operated safely'' and that ''the responsibilities imposed on [CMV drivers] do not impair their ability to operate the vehicles safely.'' The changes to part 383 proposed in this rule would help to ensure that drivers who operate CMVs are legally licensed to do so and that they do not operate CMVs without having passed the requisite tests.

The MCA authorized the Secretary of Transportation to prescribe requirements for the ''qualifications * * * of employees'' of for-hire and private motor carriers (49 U.S.C. 31502(b)). This NPRM, like the CDL regulations, is based in part on that authority and is intended to enhance the qualifications of CMV drivers by ensuring that they obtain a CLP before applying for a CDL.

Section 4122 of SAFETEA–LU required the Department of Transportation (DOT) to prescribe regulations on minimum uniform standards for the issuance of CLPs, as it has already done for CDLs (49 U.S.C. 31308(2)). More specifically, section 4122 provided that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary and may have only one CLP at a time; that the CLP document must have the same information and security features as the CDL; and that the data on each CLP holder must be added to the driver's record in the Commercial Driver's License Information System (CDLIS).[1] This NPRM includes each of those requirements, as explained later in this preamble.

Section 703(a) of the SAFE Port Act required the Secretary of Transportation to issue regulations implementing the recommendations in a memorandum issued by the DOT's Office of the Inspector General (OIG) on June 4, 2004, concerning verification of the legal status of commercial drivers. Section 703(b) required the Secretary, in cooperation with the Department of Homeland Security, to issue a regulation to implement the recommendations in a report issued by the OIG on February 7, 2006 [''Oversight of the Commercial Driver's License Program''] dealing with steps needed to improve anti-fraud measures in the CDL program. In a 2002 CDL audit report, the OIG recommended that FMCSA require testing protocols and performance oriented requirements for English language proficiency. This regulatory proposal incorporates all of the OIG's recommendations which are discussed in more detail later in the preamble. Many of the operational procedures suggested by the OIG for carrying out the recommendations have also been adopted.

In addition to the specific legal authorities discussed above, FMCSA is required, before prescribing regulations, to consider the ''costs and benefits'' of any proposal (49 U.S.C. 31136(c)(2)(A), 31502(d)). The Regulatory Flexibility Analysis prepared for this proposed rule discusses those issues later in the preamble and more comprehensively in a separate document filed in the docket.

II. Background

A. Summary of This NPRM

The Notice of Proposed Rulemaking (NPRM) proposes the following revisions to the CDL knowledge and skills testing standards in response to the statutory mandates and OIG recommendations:

(1) Knowledge and Skills Testing Requirements

Successful completion of the knowledge test, currently a prerequisite for the CDL, would be required before issuance of the CLP. The NPRM would incorporate by reference the latest American Association of Motor Vehicle Administrators' (AAMVA) Model Test package for knowledge and skill standards. It would include a prohibition on use of foreign language interpreters in the administration of the knowledge and skills tests, to reduce the potential for fraud.

(2) Issuance of and Standards for CLPs and CDLs

The NPRM would specifically require that each applicant obtain a CLP and hold it for a minimum of 30 days before applying for a CDL. It would establish a minimum age of 18 for issuance of a CLP. The CLP would have to be a separate document from the CDL or non-commercial driver's license (non-

[1] CDLIS is an information system to exchange commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

CDL [2]), would have to be tamperproof to the extent possible, and would have to include the same information as the CDL. The only endorsement allowed on the CLP would be a restricted passenger (P) endorsement. Each State would be required to create a CDLIS record for each CLP it issues.

Before issuing a CLP to a driver, the issuing State would be required to perform a check of the driver's previous driving record using both CDLIS and the Problem Driver Pointer System (PDPS) to ensure the driver is not subject to the sanctions of § 383.51, based on previous motor vehicle violations. Discovery of such sanctions would result in the State's refusal to issue a CLP to the driver.

The NPRM would strengthen the legal presence requirements and increase documentation required for CLP and CDL applicants to demonstrate their legal presence in the United States, as discussed under section III.1, below. For example, State driver's license agencies would be required to verify the applicant's Social Security Number with the Social Security Administration (SSA). The NPRM would also address applicants who wish to attend a driver training school in a State other than the applicant's State of domicile. States would be required to recognize CLPs issued by other States for training purposes. The NPRM would limit the initial and renewal periods for both CLPs and CDLs. It would clarify under what circumstances an applicant must surrender the CLP, CDL, or non-CDL. It would also require all States to use standardized endorsement and restriction codes on CDLs.

Many of the program areas and issues dealt with in this NPRM are also addressed in the Department of Homeland Security's (DHS) final rule implementing the REAL ID Act (''Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes,'' 73 FR 5272, January 29, 2008, codified in 6 CFR part 37). Although FMCSA and DHS have coordinated efforts to write regulations that neither overlap nor conflict, the statutes underlying these two rules serve different purposes and apply to distinct kinds of licenses and driver populations. FMCSA welcomes suggestions for clarifying both the commonalities between this rule and the REAL ID rule and the differences between them. For example, we recognize that certain REAL ID requirements exceed those proposed in this rule and that a State in compliance with the former would automatically comply with the latter. In this situation, one alternative would be to adopt the REAL ID requirements, either verbatim or by reference, into the FMCSRs.

FMCSA recognizes that further harmonization with the REAL ID rule may be needed before adopting a final rule. We welcome all suggestions consistent with the requirements of the CDL program which would help us achieve that goal. We are especially interested in comments from the States, which have the primary responsibility for complying with the FMCSA and DHS requirements and the greatest expertise in managing licensing programs. Their views on the possibility of adopting the language of the REAL ID rule for various requirements in this regulation would be valuable.

(3) Measures for Prevention of Fraud

The NPRM would include proposed requirements intended to improve the ability of States to detect and prevent fraudulent testing and licensing activity in the CDL program. These measures would include the following:

- Requiring verification of social security numbers.
- Requiring CLP and CDL applicants to prove legal presence in the United States.
- Requiring that a digitized photo of the driver be preserved by the State driver licensing agency.
- Requiring computer system controls to allow overrides by supervisory personnel only.
- Requiring background checks and formal training for all test driving examiners.
- Requiring the establishment of oversight systems for all examiners and testers (including third-party).
- Disallowing the use of language interpreters for the knowledge and skills tests.

In addition proposed amendments to part 384 would require these items to be reviewed whenever FMCSA conducts a CDL compliance review of the State program. States found in substantial non-compliance with these fraud control measures, as well as the other requirements of part 384, would be subject to the loss of Federal-aid highway funds.

(4) Other Regulatory Changes

The proposed rule would specifically prohibit a motor carrier from using a driver to operate a CMV who does not hold a current and appropriate CLP or CDL or to operate a vehicle in violation of the restrictions on the CLP or CDL. Also, it would incorporate into the regulations current FMCSA guidance (available on the Agency's Web site, under ''Guidance for Regulations,'' at *http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.htm,* related to issues addressed by this rulemaking. Finally, there would be numerous minor editorial corrections and updates.

B. History

The CDL program was established by the Commercial Motor Vehicle Safety Act of 1986. Parts 383 and 384 of Title 49, Code of Federal Regulations, implement the CMVSA requirements. The CMVSA prohibits any person who does not hold a valid CDL or learner's permit issued by his or her State of domicile from operating a CMV that requires a driver with a CDL. The prohibition further affects driver training activities by limiting trainees to their State of domicile to (1) receive training and behind-the-wheel experience, and (2) take the knowledge and skills tests necessary to be issued a CDL. This outcome creates problems because commercial driver training facilities and the type of training needed are not equally available in all States.

To address this and other issues, such as a lack of uniformity in the duration of learner's permits, associated driver history recordkeeping, and test reciprocity among States, the Federal Highway Administration (FHWA) published an NPRM on August 22, 1990 (55 FR 34478). (Note: In the discussion below, the responsible agency is referred to as the FMCSA, regardless of whether the action described occurred before or after the transfer of responsibility from FHWA to FMCSA in January 2000.)

Since the 1990 NPRM, major changes have occurred in the CDL program through other rulemakings, regulatory guidance, legislation, and policy decisions. For example, the September 11, 2001, terrorist attacks prompted Congress and FMCSA to expand the scope of the CDL program to include issues related to fraud and security. The issuance of CDLs to unqualified persons and persons with false identities significantly complicated detection and prevention of fraud. All of these major changes made the 1990 proposal obsolete. Thus, FMCSA withdrew the 1990 NPRM on February 23, 2006 (71 FR 42741). The current rulemaking effort revisits these issues and proposes regulatory changes to implement section 4019 of TEA–21, section 4122 of SAFETEA–LU, and section 703 of the SAFE Port Act.

[2] A ''non-CDL'' is any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

III. General Discussion of the Issues and Proposals

FMCSA identified 17 issues to be addressed in the NPRM. This section includes a description of each issue, alternatives considered to address the issue, and FMCSA's proposed solution. This section also identifies the sections in 49 CFR parts 383 and 384 that would be amended. A summary of the regulatory changes organized by section number appears below in the Section-By-Section Discussion of the Proposals.

1. Strengthen Legal Presence Requirement

Virtually all States currently issue CLPs and CDLs to U.S. citizens and persons with permanent legal presence in the country who may not be domiciled (i.e., permanent home and principal residence) in their State. CLPs and CDLs are also being issued to persons who have temporary legal presence in the country and are, therefore, domiciled in a foreign country.

On June 4, 2004, the DOT OIG issued a Management Advisory on the need for FMCSA to establish a legal presence requirement for obtaining a CDL. The OIG recommended, at a minimum, requiring proof of citizenship, or permanent residency or legal presence in the United States before a State issues a CDL. The OIG recommended that this requirement be made part of the licensing regulations, and FMCSA proposes in the NPRM to require an applicant for a CLP to make a similar demonstration.

Although ''domicile'' is not defined in parts 383 or 384, ''State of domicile'' is defined in § 383.5 to mean that State ''where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.'' If a State requires proof of domicile as a prerequisite for a learner's permit, then those applicants who can demonstrate that they permanently live in the State, i.e., U.S. citizens and lawful permanent residents, would be successful.

A related issue is the documentation that would be acceptable as proof of domicile. Presumably, the States recognize their own non-CDLs or other evidence of a home or residence in the State, for example, a utility bill. While many States take precautions to check an applicant's record, such as conducting Social Security Number (SSN) verification, this demonstration of domicile can be made by an applicant who does not qualify. In some cases, both U.S. and non-U.S. citizens might be able to meet residency requirements using a driver's license or showing of residence that masks lack of domicile and/or citizenship or legal status. Currently, levels of documentation for residency are not uniform or stringent enough to meet the OIG's standards of legal presence.

The list of acceptable documents to show proof of citizenship or immigration status for obtaining a hazardous materials endorsement (Table 1 to § 383.71) could be adopted for all issuances of a CLP and CDL. An additional method for proving identity and reducing fraud is verifying applicants' SSNs with the Social Security Administration (SSA), which is discussed under Issue 2.

The NPRM proposes to reinforce ''State of domicile,'' as currently defined in the regulations, as the basis for the States' actions to issue CLPs and CDLs. The NPRM revises the regulations to specify that a State may only issue a CLP or CDL to an applicant who is a U.S. citizen or a lawful permanent resident of the United States. Applicants domiciled in a foreign country, other than Canada and Mexico, who have temporary or indefinite legal presence in the country may be issued a Nonresident CLP or Nonresident CDL (regulations preclude issuing Nonresident licenses to Canada and Mexico). The NPRM also requires an applicant to demonstrate legal domicile (not just prove legal presence), and to present certain documentation to obtain a Nonresident CLP and CDL. To accomplish this goal, FMCSA adopts OIG recommendations for document verification for all CLP and CDL drivers, that is, the same document verification process as is required for hazardous materials (hazmat) endorsements under § 383.71(a)(9).

These requirements for verification, along with other OIG recommendation for verifying Social Security Numbers, would help to reduce the incidence of fraud in the CDL program. FMCSA proposes to revise §§ 383.71 and 383.73 to address this issue.

2. Social Security Number Verification Before Issuing CLP or CDL

When a CLP or CDL is issued to an applicant, it is important to verify that the information provided on the application form is accurate, and that the person submitting the application is who he or she claims to be. FMCSA has provided CDL grant funds to encourage States to verify social security numbers (SSNs) when issuing CDLs. Currently, 45 States perform at least limited verification of SSN, name, and date of birth with the Social Security Administration (SSA).

FMCSA considered two alternatives for SSN verification. First, take no action.

Second, the CLP and CDL issuance procedures should require States to verify certain identifying information (e.g., name, date of birth, and SSN) submitted on the license application with the information on file with the SSA. The States would be prohibited from issuing, renewing, upgrading, or transferring a CLP or CDL if the SSA database does not match the data provided by the applicant. This should provide an effective safeguard against issuing CLPs or CDLs to applicants who apply for a CLP or CDL based on fraud.

FMCSA proposes the second alternative because approximately 45 States currently conduct SSN verification for CDL applicants. Thus, requiring SSN verification for both CLPs and CDLs would appear to impose no additional burden on the majority of States; nor would it appear to be an unreasonable burden on those States that do not currently subject CLP or CDL applicants to SSN verification.

Verification of SSN can be accomplished electronically through both individual and batch methods with minimum administrative cost or burden to States. The SSN verification would only have to be performed once on a CLP or CDL applicant if a notation is placed on the driver record that the verification had been done and the results matched information provided by the applicant.

The OIG mentioned fingerprinting as an alternative to a more thorough verification of SSNs, rather than as a program that should be undertaken in parallel with SSN verification. FMCSA is not proposing to require States to perform fingerprinting of CLP or CDL applicants at this time because the cost of fingerprinting is significantly higher than the cost of electronic verification of SSNs. Furthermore, the incremental benefits in terms of security do not appear to justify the cost in terms of equipment, training, and staffing, necessary to develop a fingerprinting program for each State. Thus, FMCSA proposes to add a provision to § 383.73. FMCSA believes that its proposed revision adequately addresses OIG concerns.

3. Surrender of CLP, CDL, and Non-CDL Documents

Currently, §§ 383.71 and 383.73 require the surrender of an existing license only when a CDL is being issued and the license it is replacing is either a non-CDL or a CDL from out of State.

There is no requirement in the current regulations that requires a driver to surrender (1) his or her license when being issued a CDL, if the license is from the same State that is issuing the CDL, (2) his or her CLP when it is being renewed or upgraded or a CDL is issued, or (3) an old CDL when the CDL is renewed or upgraded to add a new endorsement or class of license to the new CDL. Although some States do require the surrender of the old CDL when it is renewed or upgraded, sometimes the old CDL is returned to the driver with a corner cut off or a hole punched in it as indication of invalidating the old document. In some cases, the hole is punched on the expiration date making it impossible for law enforcement to determine whether it is a valid license. Better stewardship requirements are needed for the surrender of all non-CDLs, CLPs, and previously issued CDLs when a new CDL is issued.

FMCSA proposes to amend §§ 383.71, 383.73, and 384.211, and to add proposed § 383.25, to expand the current surrender requirements to include any transaction where a CLP is being upgraded or a CDL is being initially issued, upgraded, or transferred. FMCSA also proposes to incorporate into its regulations, the regulatory guidance posted on the Agency's Web site for § 383.73 question 11 and § 384.211 question 1 on stewardship requirements for surrendered CDLs and to apply it to all of the above-mentioned transactions. This guidance allows licensing jurisdictions to meet the stewardship requirements for surrendered licenses by physically marking the license in some way as not valid and returning it to a driver. The document must be perforated with the word ''VOID'' or with holes large enough to make it easily identifiable to a casual observer as an invalid document. Punching a hole through the expiration date is not sufficient. Thus, in the case of renewed CDLs, if a State requires the surrender of the old CDL, the stewardship requirements must be followed.

4. CDL Testing Requirements for Out-of-State Driver Training School Students

Current regulations (§§ 383.23(a)(2) and 384.212) allow a jurisdiction to license a driver only if the driver is ''domiciled'' in that jurisdiction. Drivers who temporarily go to another jurisdiction to receive driver training cannot legally obtain either a CLP or a CDL from the jurisdiction in which the training occurs because they are not ''domiciled'' in that jurisdiction. Further, some States do not recognize an out-of-State CLP for on-the-road training.

Motor carriers and driver training schools advertise that they will assist drivers in obtaining CDLs upon completion of their training programs. Many training entities provide their students with a representative CMV for use in taking the skills test, and a driver with a CDL to accompany the student to the skills test location. Generally, these organizations can provide such a representative vehicle only within the jurisdiction in which the carrier's training facility or the school is located, i.e., the jurisdiction where the training is given. The driver holding a CLP who has left his/her State of domicile and licensure to obtain training then must return to his or her State of domicile and licensure to complete the skills testing. This presents the challenge of finding a vehicle that represents the type a driver expects to operate and finding a driver with a currently valid CDL to accompany the driver to the skills test location. Further, the costs associated with obtaining the vehicle and accompanying driver can be considerable, estimated at $150 to $200 per day. Finally, the applicant for a CLP or CDL must also meet the insurance requirements for using the representative vehicle when that cost is not borne by the employing motor carrier or a training school.

Another problem with the existing system is the perceived inconsistency of State approaches to issuing CLPs or accepting knowledge or skills testing from other jurisdictions.

FMCSA considered two alternatives based on issuance of a CLP after a demonstration of the applicant's State of domicile. First, after successful completion of a *knowledge test,* a person who holds a non-CDL in his or her State of domicile (or who holds a CDL that he/she wishes to upgrade) could obtain a CLP from that State of domicile and receive skills training in any State. The CLP would be recognized in all States in the same manner as CDLs. Upon successful completion of a *skills test* out of State, the driver could surrender both the CLP and the underlying CDL [3] or non-CDL to the State of training and receive a temporary, non-renewable, Nonresident CDL which would expire in 60 or 90 days. During this 60- to 90-day period the driver would return to his or her State of domicile to obtain a permanent CDL. The temporary Nonresident CDL would be recognized by the State of domicile.

However, this alternative is dependent upon whether the State in which the training is provided has the desire and authority to issue a Nonresident CDL. Other new CLP requirements in the NPRM would decrease the vulnerability to fraudulent licensing practices under this alternative. FMCSA would maintain the ''one-driver, one-license, one-record concept'' by proposing to link an underlying non-CDL to the issuance of a CLP and require both from the driver's State of domicile. Also, when the CLP and non-CDL are surrendered, the State of training temporarily becomes the State of licensure because the driver's records are transferred to that State.

Under the second alternative, a person who holds a CDL or non-CDL in his or her State of domicile could obtain a CLP from that State and obtain training in any State. A person would take the skills test in the State where the training was conducted. The State of training would send the skills test results to the State of domicile. The State of domicile would accept the results of the skills test and issue a CDL when the student returns to his or her State of domicile. This alternative is based upon a driver's State of domicile accepting the results of a CDL skills test taken out-of-State. The problem with this alternative results from the States' perceived lack of standardization of skills testing and potential for fraudulent testing. Consequently, some States might be reluctant to accept the liability of issuing a CDL based on the results of an out-of-State CDL skills test. This alternative involves reciprocity of skills testing results. FMCSA is confident that the new proposed skills test standards would provide the States with a basis for accepting another State's test results.

FMCSA proposes to revise § 383.23(c) to reflect the second alternative. Current paragraph (c) and other issues that are exclusive to the CLP would be redesignated as new § 383.25. FMCSA believes that the proposed revisions to the minimum standards for knowledge testing in subparts G and H of Part 383 would provide a basis for a State to accept another State's knowledge testing and CLP for the purpose of allowing the driver to participate in skills training out-of-State.

5. State Reciprocity for CLPs

Currently, Federal CDL regulations are silent on whether a CLP must be recognized by other States. This situation has caused some States to recognize an out-of-State CLP when the

[3] Assuming the driver already has a CDL, but is training to upgrade his/her CDL to a higher class (i.e. Group C to B) or to add an endorsement that requires skills testing (i.e. passenger endorsement).

holder is taking commercial driver training in their State, while other States have said the student can only take commercial driver training if the CLP is also from that State. Some States, even though they do not recognize a CLP from another State for training purposes, will issue an out-of-State student a CLP and establish a driver record, but allow the student to maintain his or her base license and driving record from his/her State of domicile.

FMCSA proposes to amend § 383.73(h), which would be redesignated as § 383.73(l), by adding a new requirement for CLP reciprocity. In order to maintain the ''one driver, one license, one driving record concept'' of the CDL program and to establish uniformity in the issuance of CLPs, the CLPs would only be issued by the State of domicile; but the CLP must be recognized for training purposes by all other States in the same manner as CDLs are recognized under § 383.73(h).

6. Minimum Uniform Standards for Issuing a CLP

a. Passing the General Knowledge Test To Obtain a CLP

Currently, some States do not require a knowledge test as a prerequisite to issuing a CLP. In its May 2002 audit report ''Improving Testing and Licensing of Commercial Drivers,'' the OIG recommended that FMCSA require applicants to pass a knowledge test to obtain a CLP. Section 4122 of SAFETEA–LU mandates CLP applicants pass a written test before the CLP is issued.

FMCSA proposes that every commercial driver-trainee be required to successfully complete the CDL knowledge tests before being issued a CLP. A driver who holds a valid non-CDL in his or her State of domicile would obtain a CLP from the State of domicile upon successful completion of a general CDL knowledge test. The proposal to require knowledge testing for all persons applying for a CLP is addressed in § 383.25 and proposed amendments to §§ 383.71 and 383.73. This requirement would provide for a safer driving environment by ensuring that a student demonstrates basic knowledge of operating a CMV before he or she gets behind the wheel.

b. Requiring the CLP To Be a Separate Document From the CDL or Non-CDL

States vary in the type of document that serves as a commercial learner's permit and the relationship of the commercial learner's permit to a CDL or non-CDL. In extreme cases, a non-CDL serves as the CLP and, once the driver passes the skills test, as a temporary CDL. Standardizing the CLP is a key component of this NPRM.

FMCSA proposes to establish the central requirement that the CLP be a separate document from the CDL or non-CDL. The CLP document would have to meet much the same requirements as a CDL document, but with the words ''Commercial Learner's Permit'' or ''CLP'' displayed prominently at the top. FMCSA also proposes that the restriction codes, vehicle group, and endorsement for which the driver has passed knowledge tests should be printed on the CLP document, as well as the license number of the underlying CDL or non-CDL. FMCSA also proposes that the CLP document include the statement that the permit is not valid for driving a CMV unless the driver also has on his/her possession the underlying CDL or non-CDL and only drives when accompanied by a valid CDL holder. More information about the proposal that the CLP be a separate document, but tied to the underlying CDL or non-CDL, is addressed in proposed § 383.25 and amendments to §§ 383.151 and 383.153.

c. CLP Document Should Be Tamperproof

The States permit a variety of documents to serve as CLPs. Some States issue paper documents that would be easy targets for tampering. To narrow the range of documents that serve this purpose and to improve security, section 4122 of SAFETEA–LU requires that the CLP be tamperproof and the content of the CLP document be the same as the content of the CDL document. The CLP would state that without the underlying State CDL or non-CDL the CLP is invalid. The license number of the underlying CDL or non-CDL would be displayed on the CLP.

FMCSA proposes to add a definition for ''CLP'' and ''Nonresident CLP'' to § 383.5 (Definitions). Substantive information requirements for the CLP would be analogous to the information required for a CDL and Nonresident CDL; and the term ''Commercial Learner's Permit'' or ''CLP'' must be prominently displayed on the document. If the person being issued a CLP is domiciled in a foreign jurisdiction, other than Canada or Mexico, the word ''Nonresident'' must also appear on the CLP.

FMCSA also proposes that a photograph or digitized image of the driver, the appropriate vehicle group, endorsement, and restriction codes must be shown on the CLP document. The proposed §§ 383.153 and 383.155 reflect these changes.

d. Recording the CLP in CDLIS

Current State policies make it possible for a driver to obtain a CLP from more than one State, because only about half the States create a CLP driver record in CDLIS. To address this problem, the OIG recommended that, the CLP be recorded in the CDLIS, and section 703 of the SAFE Port Act required the Agency to implement the report that included the recommendation. In addition, section 4122 of SAFETEA–LU requires the inclusion of the CLP in CDLIS.

Because the CLP together with an underlying non-CDL is a form of CDL for training when the driver is accompanied by a CDL holder, it is important that the CLP be subject to the same recordkeeping requirements as a CDL (49 CFR 383.23(c)). Moreover, these recordkeeping provisions would aid in the administration of nationwide CLP reciprocity and ensure uniform application of disqualifications to CLP holders. FMCSA has determined that the CDLIS has the capacity to handle the additional entries that are anticipated as a result of this proposal. Finally, the provision fulfills the OIG recommendation and SAFETEA–LU requirement that CDLIS be notified of all CLPs issued.

FMCSA proposes to amend §§ 383.71, 383.73, 384.205, 384.206, 284.207, and 384.225 to create a CDLIS record for a CLP and to require posting all CLP transactions to CDLIS.

7. Maximum Initial Validity and Renewal Periods for CLP and CDL

a. Initial Validity and Renewal Periods for CLP

The general principle behind limiting the duration of a CLP and restricting the number of times it can be renewed without retaking the general CDL knowledge and endorsement tests is public safety on the highway. Every CLP holder is expected to demonstrate the minimum level of requisite skills in a test situation and obtain a CDL within a reasonable period of time (§ 383.25(d)). If the CLP holder does not obtain the CDL within a reasonable period of time, it could be an indication that the CLP holder is having difficulty developing the required skills to handle a CMV safely. Consequently, a protracted learning period for a CLP holder could pose a safety hazard on the nation's public roads and highways. Therefore, it is important to closely monitor CLP holders to determine if they might be experiencing any safety problems. Such monitoring could be accomplished by checking the driver

record prior to granting a renewal of the CLP.

Some States, such as Alabama, are considering issuing CLPs for the same period as licenses, 5 years. When a CLP is issued for a lengthy period of time, it has been used illegally in some cases as a CDL in a co-driver situation, while the CDL holder is in the sleeper berth.

FMCSA considered two alternatives for limiting the initial issuance and renewal periods for CLPs.

First, a commercial driver training program including classroom and behind the wheel training usually takes 6 to 8 weeks. Considering that some students may need additional behind the wheel experience before taking the skills test for a CDL, a CLP valid for 90 days would be reasonable. Likewise, some driver-students may not pass the skills test on the first attempt and scheduling a retest may take several weeks. In that situation, the students would be allowed to renew their CLP for an additional 90 days without having to retake the general and endorsement knowledge tests.

Under the second alternative, FMCSA recognizes that not all CLP holders take formal training at a commercial driving school. They may need more time (*e.g.*, 180 days) to pass the skills test because they are not training and practicing behind-the-wheel skills on a full time basis as they would in a formal training program. Therefore, FMCSA could propose a CLP be valid for 180 days. Again, some driver-students may not pass the skills test on the first attempt and scheduling a retest may take several weeks, so the students could be allowed to renew their CLP for an additional 90 days without having to retake the general and endorsement knowledge tests.

FMCSA believes public safety demands a limitation on the time allowed for a student to obtain a CDL without having to start the process over by retaking the general and endorsement knowledge tests. There is also concern that limiting initial validity to a short period of time (*e.g.*, 90 days) puts an undue burden on both the driver and the State licensing agency in processing more renewals. Therefore, FMCSA proposes the second alternative and proposes to add new § 383.25 and to amend §§ 383.71 and 383.73.

b. Initial Validity and Renewal Periods for a CDL

The States vary in their initial duration and renewal periods for CDLs. The trend has been to expand the time periods in order to handle more drivers with the same staff and budget. In New York, for example, the renewal period for a driver's license, including CDLs, has gone from 5 years to 8 years. In Arizona, for example, all driver's licenses, including CDLs, do not have to be renewed until the driver turns 65 years old.

The ever increasing length of initial and renewal periods for CDLs is defeating the purpose of renewal. The renewal process allows the driver to update information on the license and the State to update this information on the electronic driving record, place a new photograph on the license, check the driving record (*i.e.* current State of licensure, CDLIS, and Problem Driver Pointer System (PDPS)), and, in the case of the hazardous materials endorsement, require the driver to retake the test required by § 383.71.

FMCSA considered two alternatives for limiting the initial term and renewal periods for CDLs.

Under the first alternative, the current average validity period for a license in the United States is slightly under 5 years. Some States use periods as low as 2 years and others use 8 years; a few licenses remain valid to age 65. Since the hazardous materials endorsement threat assessment must be performed at least every 5 years in accordance with a Transportation Security Administration interim rule, the initial and renewal periods could be set at a maximum of 5 years to bring the CDL renewal and threat assessment cycles into agreement. This would promote uniformity among the States and limit the escalating length of validity periods. However, FMCSA recognizes that States with periods over 5 years may object because they could not handle more frequent transactions with current staffing and budget levels.

Under the second alternative, while the current average validity period for a license in the United States is just under 5 years, the number of drivers is increasing. Therefore, States would need some flexibility to extend the validity periods to accommodate the increase with current staffing and budget levels. Except for Arizona and Georgia, we know of no State that currently has an initial and renewal period greater than 8 years. An 8-year period is also the renewal period DHS has adopted in its final rule to implement the REAL ID Act. By proposing an 8-year maximum renewal period, FMCSA agrees with the DHS requirements for all drivers' licenses. An 8-year period would provide most States the flexibility to expand beyond 5 years. At the same time, it would still promote highway safety by placing a cap on the maximum validity periods and preventing more States from following Arizona's lead by eliminating any renewal until age 65. At least once every eight years, the driver would update information on the license and the State would update this information on the electronic driving record, place a new photograph on the license, and check the driving record.

FMCSA proposes the second alternative, and §§ 383.71 and 383.73 would be modified.

8. Establish a Minimum Age for CLP

An individual is not eligible to operate a CMV in intrastate commerce before age 18 (49 CFR 350.341(f)), and in interstate commerce before 21 years (49 CFR 391.11(b)(1)), except for those persons either excepted or exempted under 49 CFR 390.3(f), 391.2 and subpart G of part 391. Despite this fact, some States are currently issuing CLPs to applicants younger than 18 years of age. As a result, an individual who cannot operate a CMV in intrastate or interstate commerce is allowed to train and obtain behind-the-wheel experience in a CMV under the age of 18.

FMCSA considered two alternatives for setting a minimum age for issuing a CLP. First, to avoid the inconsistency between States for setting the minimum age for operating a CMV with a CLP, FMCSA could recommend that an applicant for a CLP be at least 18 years old. The age limit is especially important if a CLP holder, as proposed, would be granted reciprocity to drive in another State while training.

The second alternative is the same as the first alternative. However, the exceptions and exemptions to the 21 years of age requirement for interstate commerce under 49 CFR 390.3(f), 391.2, and subpart G of part 391 would also be recognized for the issuance of a CLP.

FMCSA proposes the second alternative to be consistent with the exceptions and exemptions from age requirements granted in Parts 390 and 391 to operate in interstate commerce and, if adopted by the State, in intrastate commerce. A provision would be added to new § 383.25 and to § 383.71 to specify a minimum age requirement with limited exceptions.

9. Preconditions To Taking the CDL Skills Test

Currently, issuance of a CLP is not a precondition for issuance of a CDL. Therefore, a CDL applicant could legally obtain behind-the-wheel training on any public or private road without a CLP. Also, there is the issue of applicants without a CLP getting less than two weeks training at so called ''CDL mills rather than 6 to 8 weeks of training that

teaches them to properly operate a CMV.

In addition, the CLP holder should not be eligible to take the CDL skills test in the first 30 days after initial issuance of the CLP, because it affords the applicant an opportunity to obtain skills training and to practice what he or she is taught. This 30-day prohibition on taking the skills test may also have an effect on the training period and thoroughness of the curriculum being taught at the CDL mills, because of the interval between the general training to pass the knowledge test for a CLP and the point at which the driver is eligible to take the skills test.

FMCSA proposes to add these conditions in § 383.25 and to amend part 383, subpart H. The Agency has published a NPRM (72 FR 73226, December 26, 2007) that would require that applicants for a CDL obtain training that meets specific curriculum requirements. The entry level driver training requirement (RIN 2126–AB06) would work together with the requirements in this rulemaking to ensure that applicants for a CDL have received adequate training and have had adequate opportunity to learn safe driving skills behind the wheel of a CMV. The comment period for the Agency's entry-level driver training rule expires on May 23, 2008 (73 FR 15471, March 24, 2008).

10. Limit Endorsements on CLP to Passenger (P) Only

This rule proposes that persons who are learning to drive a CMV with a CLP should not operate specialized vehicles (e.g., double/triple trailers or tank vehicles) or carry dangerous or high-value cargo (such as hazardous materials or passengers) before they acquire basic knowledge and skills.

However, some States issue endorsements on their CLPs, or allow drivers to train on CMVs that require an endorsement without the need for the endorsement on the CLP or CDL. Section 383.93 requires a driver to pass the general knowledge and skills test for a CDL before being eligible to add endorsements for double/triple trailers, passenger vehicles, tank vehicles, vehicles used to transport hazardous materials, and school buses. While all endorsements require a knowledge test specific to the endorsement, only the passenger (P) endorsement under § 383.93(c)(2) and the school bus (S) endorsement under § 383.93(c)(5) require successful completion of both a knowledge and skills test. Thus, only the P and S endorsements require the applicant to obtain behind-the-wheel experience to prepare to pass the skills test.

FMCSA proposes that only the P endorsement be allowed on the CLP after the driver successfully passes the endorsement knowledge test. We further propose that the CLP holder with the P endorsement be prohibited from driving a CMV carrying passengers. While the S endorsement requires skills training to pass the skills test, it is only needed when the driver is actually transporting students. Thus, there is no need to have the S endorsement on the CLP when training for the CDL because it would not be a safe practice to allow driver trainees to transport students. If the applicant is training on a school bus, the endorsement knowledge test must be passed and noted on the driver's record.

FMCSA also proposes that the P endorsement on the CLP be class specific. The driver can only undergo skills testing in a class of passenger vehicles or school bus for which he or she has passed knowledge training. This requirement is similar to what is required for P or S endorsements as CDL upgrades. The CLP holder must also be accompanied and directly supervised by a driver qualified for such a vehicle type.

No other endorsements should be allowed on a CLP for safety reasons. The hazardous materials (H) endorsement is currently prohibited for security reasons. FMCSA sees no justification for allowing CLP holders to train on double/triple vehicles, tank vehicles, and vehicles carrying hazardous materials. Drivers wishing to develop skills on these vehicles must first obtain a CDL and then seek additional training needed for an endorsement.

FMCSA proposes to add § 383.25 and to amend §§ 383.71, 383.73, 383.93, and 383.153. These proposed requirements and restrictions for the P and S endorsements on the CLP would apply whether the CLP holder has only a non-CDL, or already has a CDL and is seeking an upgrade by adding the P or S endorsements.

11. Methods of Administering CDL Tests

State and Federal investigations have revealed applicant and examiner fraud in the use of interpreters during knowledge and skills testing. The OIG has issued recommendations on this issue. The agency has issued Regulatory Guidance on 49 CFR Part 383 concerning the use of interpreters and written, verbal, and automated foreign language tests. The use of interpreters during knowledge testing has resulted in fraud; questions are sometimes answered by the interpreter, not the applicant. The use of interpreters during skills testing could pose a serious safety hazard to the driver, the examiner, the CMV and the general public on the highway. For example, if would be dangerous if a testing official gave the driver a command based on an observed hazard or situation, but the driver did not immediately comprehend the command.

The OIG also recommended in its 2002 CDL audit report that FMCSA require testing protocols and performance oriented requirements for English language proficiency.

FMCSA proposes to amend § 383.133. The fraud and safety concerns identified over the past few years lead FMCSA to conclude that the rules should provide clear guidance on test administration. The NPRM would propose to eliminate the use of interpreters in both the knowledge and the skills testing. There are alternate ways to conduct knowledge tests in foreign languages through the use of written, recorded and automated testing. With regard to skills testing, interpreters are a safety issue, not a language accommodation issue. While a foreign speaking applicant may have difficulty comprehending long questions and multiple choice responses in English, immediate response to verbal commands and instructions in English by a skills test examiner is vital to public safety. This proposed rule attempts to strike a balance between accommodation of applicants for whom English is their second language and who undergo CDL testing, while preserving the necessary protections against fraud and safety risks to drivers, skills test examiners, and the general public on highways.

12. Update Federal Knowledge and Skills Test Standards

Section 4019 of TEA–21 required FMCSA to complete a review of the current system of CDL knowledge and skills testing, and determine if it is an accurate measure of an individual's knowledge and skills as an operator of a CMV. Section 4019 further required FMCSA to issue regulations reflecting the results of the review. This mandate was addressed by the American Association of Motor Vehicle Administrators (AAMVA) and the FMCSA jointly. The recently updated versions of AAMVA's model CDL knowledge and skills tests, and driver and examiner manuals were released to the States in January 2006. The updated model test package (Version 2005) meets a higher standard of knowledge and skills testing than the current Federal standards in part 383, subparts G and H. While some States are voluntarily adopting the updated model test

package (tests and manuals), the majority of the States will not fully adopt them until the Federal testing standards are raised to meet the model test standards.

FMCSA considered two alternatives for updating the Federal knowledge and skills testing standards.

Under the first alternative, FMCSA would incorporate the AAMVA model test package (Version 2005) by reference into the Federal regulation for CDL knowledge and skills standards. This is justified because AAMVA's 2005 model testing package was developed with major input by representatives from the industry that would be affected by the new testing standards, and as a way of promoting uniformity among the States.

Some modifications to part 383, subparts G and H, would be needed to match the knowledge standards in the model testing package. These modifications would address: (1) The number of questions that are required on the general and endorsement knowledge tests; (2) the number of knowledge categories (domains) that must be represented with questions on the general and endorsement knowledge tests; and (3) the adoption of the AAMVA 2005 Requirements Document algorithm for creating multiple versions of the knowledge test.

In addition, modifications to part 383, subparts G and H, would be needed to: (1) Make the entire pre-trip inspection (not just the air brake inspection) part of the skills standard, rather than the current knowledge standard; (2) prohibit the banking of parts of the skills test (for example, an applicant who passes the pre-trip and off-road maneuvers, but fails the on-road part of test must retake all three parts of the skills test); (3) adopt the expanded definition of CMV in section 4011(a) of TEA–21 to include both ''gross vehicle weight rating and gross vehicle weight'' and ''gross combination weight rating and gross combination weight,'' ''whichever is greater.'';[4] (4) eliminate § 383.77, since the substitute for a driving skills test was intended only for the initial testing cycle prior to April 1, 1992; and (5) adopt the OIG recommendation to require covert monitoring of State and third party skills test examiners.

The second alternative is the same as the first alternative, except that the AAMVA model testing package would not be adopted by reference. Only the major aspects of the model testing package would be incorporated into the Federal knowledge and skills testing standards, similar to what is in the current testing standards in part 383, Subparts G and H.

FMCSA proposes the first alternative in order to promote more uniformity among the States. FMCSA proposes to amend § 383.5 and part 383, subparts G and H, and to add § 384.229.

13. New Standardized Endorsements and Restriction Codes

Currently, uniform codes are not required for all endorsements and restrictions on a CDL. For example, unlike the standardized CDL codes for the double /triple trailer (T), hazardous materials (H), tank vehicle (N), passenger vehicle (P) and school bus (S) endorsements, the air brake restriction has no standardized code. The fact that States are using five different codes causes enforcement problems. In one State a ''K'' restriction means an air brake restriction while in another State it means an intrastate-only restriction.

Several issues have been raised by motor carriers and State driver licensing skills examiners in regard to CMVs with (1) automatic transmissions or manual transmissions; (2) air over hydraulic versus air brakes; and (3) non-fifth wheel (e.g., pintle hook) versus fifth wheel combination vehicles. Motor carriers are concerned when they hire drivers with a CDL who (1) cannot operate manual transmission vehicles; (2) cannot test or operate a full air brake system; and/or (3) cannot hook up a fifth wheel power unit with a semi-trailer. State examiners are concerned when they cannot test the applicant on (1) a full air brake system; (2) a manual transmission; and/or (3) fifth wheel combination hookup because the vehicle brought to the test is not so. However, there is no current Federal requirement that the test vehicles be outfitted with these features. A number of States have imposed restrictions on CDLs for drivers who take the skills test in a CMV that is missing one or more of these features, but there are no standardized codes for these restrictions.

Another issue related to endorsements is the confusing definition of ''tank vehicle'' under § 383.5 because of the reference to the definition of ''cargo tank'' in 49 CFR part 171. The definition in Part 383 implies that a driver needs a tank endorsement to operate a vehicle with a permanently attached tank that has a rated capacity greater than 119.5 gallons. In the case of a portable tank temporarily attached to the vehicle, a tank endorsement is needed only if the portable tank has a rated capacity of 1,000 gallons or more.

FMCSA proposes to amend §§ 383.5, 383.93, 383.95, and 383.153. FMCSA believes that Federal restrictions should be developed for applicants who use a vehicle in the skills test that is equipped with (1) an automatic transmission; (2) air over hydraulic brakes; or (3) a non-fifth wheel (pintle hook). All three restrictions would be assigned standardized restriction codes, along with a standardized code for the current air brake restriction.

The disparity in minimum rated capacity between permanently attached tanks (119 gallons) and temporarily attached portable tanks (1000 gallons) for the tank vehicle endorsement makes no sense. As FMCSA has no reports of any problems with drivers transporting portable tanks with a rated capacity under 1,000 gallons, the NPRM proposes a rated capacity threshold of 1,000 or more gallons for all tanks before a driver would need a tank endorsement. This would also eliminate the controversy over whether the driver of a ready mix concrete truck equipped with a small water tank to clean the mixer drum or a truck transporting generators with small fuel tanks needs a tank vehicle endorsement.

14. Previous Driving Offenses by CLP Holders and CLP Applicants

a. Holders of a CLP

FMCSA does not currently subject a CLP holder to the basic rules of the CDL program. The question has been raised whether a CLP holder is subject to the disqualifying offenses in § 383.51 for major offenses under Table 1 and minor offenses under Table 2, including those that occur when operating a non-CMV. In other words, is a CLP holder ''a CDL holder'' for purpose of being disqualified? Under current § 383.51, the answer is no.

FMCSA considered two alternatives for dealing with disqualifying offenses of a CLP holder. Under the first alternative, FMCSA could leave the regulations unchanged and not apply the disqualifications to CLP holders. This would allow some CLP holders who are convicted of disqualifying offenses while operating a non-CMV to continue avoiding license sanctions. In the second alternative, FMCSA could subject the holder of the CLP to the same rules as a driver who holds a CDL. This would ensure that drivers who have been convicted of the violations described in § 383.51, whether they occurred in a CMV or non-CMV, would not operate CDL vehicles on our nation's highways until the end of the full disqualification period for the offense in the non-CMV.

[4] The expanded definition should be limited to roadside enforcement and not used for skills testing in order to maintain the representative vehicle concept.

FMCSA proposes the second alternative because of the increased level of safety that would result from higher qualification standards for CMV drivers. FMCSA also proposes to amend §§ 383.5, 383.51(b) and (c), 383.71, and 383.73.

b. Applicants for a CLP

Applicants for a CLP are not currently subject to the basic rules of the CDL program. An applicant who has been disqualified from driving an automobile can nevertheless obtain and use a CLP, even during the disqualification period. This driver would then be able to upgrade to a CDL later, potentially resulting in an unsafe driver behind the wheel of a CMV on the highway.

FMCSA considered two alternatives for dealing with disqualifying offenses of a CLP applicant. First, FMCSA could leave the current regulations as they are currently written and not apply the disqualifications to CLP applicants. This would allow an applicant for a CLP to remain exempt from the disqualifying offenses of § 383.51.

Second, FMCSA could subject the applicant for the CLP to the same rules that exist today for a CDL applicant. Before issuing a CLP to a driver, the issuing State would be required to perform a check into the driver's current driving record at the current State of licensure, and using both CDLIS and the Problem Driver Pointer System (PDPS) to ensure the driver is not subject to the sanctions of § 383.51 or any license suspension, revocation, or cancellation under State law and that the person does not have a driver's license from more than one State or jurisdiction. Discovery of such sanctions would result in the State's refusal to issue a CLP until the end of the full disqualification period for the offense. This would ensure that drivers who have been convicted of the unsafe driving violations described in § 383.51 prior to applying for a CLP, regardless if they occurred in a CMV or non-CMV, would not operate CMVs on our nation's highways while disqualified.

This NPRM proposes the second alternative because of the increased level of safety that would result from higher qualification standards for CMV drivers. FMCSA proposes to amend §§ 383.5, 383.51(b)–(c), 383.71, and 383.73 accordingly.

15. Motor Carrier Prohibitions

Current § 383.37 prohibits employers from allowing disqualified drivers to operate a CMV. However it does not include a prohibition on using a driver who simply does not have a current CLP or CDL or who does not have a CDL with the proper class or endorsements, or using a driver to operate a CMV that violates a restriction on the driver's CDL. This omission makes it difficult for FMCSA to properly cite and take enforcement action against a motor carrier.

FMCSA proposes to include a specific prohibition against motor carriers using drivers who do not have a current CLP or CDL or who do not have a CDL with the proper class or endorsements, or using a driver to operate a CMV in violation of a restriction on the driver's CDL. FMCSA proposes to amend § 383.37 and Appendix B to Part 385.

16. Incorporate CLP-Related Regulatory Guidance Into Regulatory Text

Over the past several years, FMCSA has published a number of interpretations in response to requests for clarification of regulations applicable to CLPs and driver testing. While these interpretations do not have the force of regulation, they nonetheless guide Agency enforcement. (The current interpretations are available on the FMCSA Web site under ''Guidance for Regulations'' at *http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.htm*. The interpretations are listed under the applicable 49 CFR part.) However, the parties who requested the interpretations had no opportunity to question them or to amplify the inquiry, and other parties might be unaware of the Agency's position. Regulatory Guidance, once issued, should therefore be incorporated into regulatory text, as needed.

FMCSA proposes to codify regulatory guidance related to this rulemaking by subjecting it to public notice and comment. Regulatory guidance made obsolete by the changes in this rulemaking would be eliminated. This would include regulatory guidance under § 383.23 (CLP), questions 1, 2, and 4; part 383, Subparts G and H, all questions (knowledge and skills testing); and § 383.153, questions 1–7 (CLP and CDL document). FMCSA proposes to amend §§ 383.25, 383.73, 383.77, 383.95, 383.113, 383.131, 383.133 and 383.153.

17. Incorporate SAFE Port Act Provisions

On October 13, 2006, the President signed into law the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109–347. Section 703, Trucking Security, requires FMCSA to implement requirements from two Office of Inspector General (OIG) reports:

(a) *June 4, 2004 Memorandum: Need to Establish a Legal Presence Requirement for Obtaining a Commercial Driver's License* (Control No. 2004–054). This 2004 OIG report recommended that FMCSA establish a legal presence requirement for obtaining a CDL. The report said that all CDL applicants should demonstrate either citizenship or lawful permanent residence in the United States before a State may issue a CDL. FMCSA has addressed this recommendation in this NPRM.

(b) *February 7, 2006 Memorandum: Report on Federal Motor Carrier Safety Administration Oversight of Commercial Driver's License Program* (Report Number MH–2006–037). This 2006 OIG report contains three broad recommendations to detect and prevent fraudulent testing and licensing activity in the CDL program:

(1) Direct the States to report on the final disposition of all suspect drivers identified by the States. These disposition reports should emphasize but not necessarily be limited to instances where there is specific or direct evidence that the driver participated in a fraudulent activity to obtain the CDL.

(2) Determine that State CDL programs are out of compliance, under Federal regulations, if the State fails to impose adequate internal controls to prevent fraud or fails to take or propose necessary corrective action.

(3) Impose sanctions, under Federal regulations, against those States that fail to establish adequate fraud control measures for their CDL programs.

The first recommendation in the 2006 OIG report was based on a February 24, 2005, OIG memorandum to FMCSA on data collected from the States, which identified 15,032 CDL holders suspected of fraudulent activities. The States took action against 8,293 of these drivers, including removing CDL privileges. The status of the remaining 6,739 suspect drivers was not determined at that time because the drivers had moved from their original State of record. FMCSA said that it would ask the States to determine the final disposition of these drivers, but the Agency does not have legal authority under parts 383 or 384 to require the States to make such a report.

As a short term solution to this problem, FMCSA addressed this recommendation by contacting the States and requesting that they report the final disposition of the 6,739 suspect CDL holders. As a long term solution, FMCSA proposes to require States to invalidate CDLs issued as the result of examiner fraud and to retest the driver. However, if a driver was convicted of

fraudulent activities related to the issuance of a CDL, the issuing State would be required to withdraw the driver's CDL and post this information on his/her CDLIS record. The driver would not be allowed to reapply for a new CDL for one year.

With regard to the second recommendation in the 2006 OIG report, FMCSA proposes new requirements to combat fraud (prohibiting interpreters, requiring social security number verification, checking legal presence, etc). This NPRM proposes to require that:

○ A digitized photo of the driver be kept on file by the State licensing agency.

○ The State establish computer system controls that prevent changes to records of transactions, unless they are done by supervisory personnel only and are documented.

○ Background checks and formal training be mandatory for all driving test examiners.

○ The States establish oversight systems for all examiners, including third-party examiners.

Regarding the OIG's third recommendation in the OIG 2006 report, FMCSA proposes that the measures described above be added to the requirements of part 384, thus requiring these items to be reviewed for compliance whenever a State undergoes a CDL compliance review by FMCSA. States found in substantial non-compliance with these fraud control measures, as well as the other requirements of part 384, would be subject to the loss of Federal-aid highway funding. FMCSA proposes to amend §§ 383.73 and 383.75, and to add §§ 384.227, 384.228, and 384.229.

IV. Section-By-Section Discussion of the Proposals

This section includes a summary of the regulatory changes proposed for 49 CFR parts 383, 384, and 385 organized by section number.

A. Proposed Changes to Part 383

Part 383, Commercial Driver's License Standards; Requirements and penalties, contains the requirements for CDLs and CLPs. With certain exceptions, the rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

1. Section 383.5, Definitions

FMCSA proposes to add a definition of ''CDL driver'' to clarify that the requirements that apply to CDL driver also apply to anyone required to hold a CDL, even if the person does not currently hold a CDL. This change would facilitate enforcement of the rules against those who do not properly obtain a CDL.

FMCSA proposes to add a definition of ''commercial learner's permit'' to specify that a CLP, in combination with an underlying license, provides authority to operate a CMV on public highways for the purpose of behind the wheel training when accompanied by a qualified CDL holder. FMCSA also proposes to adopt the expanded definition of CMV in section 4011(a) of TEA–21 to include both ''gross vehicle weight rating and gross vehicle weight'' and ''gross combination weight rating and gross combination weight,'' ''whichever is greater.'' The expanded definition is proposed to be limited to roadside enforcement of the CDL requirements to cite drivers who are trying to avoid the need for a CDL by operating a vehicle that has a gross vehicle weight rating (GVWR) or a gross combination weight rating (GCWR) under 26,001 pounds, but then overload the vehicle so the gross vehicle weight (GVW) or gross combination weight (GCW) is over 26,000 pounds. As currently specified in § 383.91(b), only the GVWR or GCWR of the vehicle is used for skills testing because overloading a vehicle to obtain a GVW or GCW over 26,000 pounds is both unsafe and not a representative vehicle for demonstrating driving skills for a CDL.

The definition of ''imminent hazard'' would be amended to add one phrase. Under 49 U.S.C. 31310(f), FMCSA is authorized to disqualify a CDL holder who is determined to constitute ''an imminent hazard (as such term is defined in section 5102).'' Section 383.52 implements that authority, and section 383.5 defines ''imminent hazard'' in the same terms as 49 U.S.C. 5102. This amendment is necessary because section 7102(4) of SAFETEA–LU amended the definition in section 5102 to say that imminent hazard ''means the existence of a condition relating to hazardous materials that presents a substantial likelihood that death * * *'' Since this definition governs FMCSA's authority under § 383.52, the corresponding definition in § 383.5 must be changed. The effect of the change is to narrow somewhat the scope of § 383.52.

The definition of ''serious traffic violation'' would be removed because the substance of the definition was previously incorporated into § 383.51 and the definition is no longer necessary.

The definition of ''tank vehicle'' would be revised to clarify that only tanks with a rated capacity of 1,000 gallons or more come under the definition.

FMCSA proposes to add definitions of ''third party skills test examiner'' and ''third party tester'' to clarify to whom the new requirements on third party testers proposed for part 384 would apply.

References to ''CLP'' are proposed to be added in the definitions of ''disqualification,'' ''driver applicant,'' ''endorsement,'' and ''non-resident CDL.''

In addition, editorial changes are proposed for the definitions of ''commercial driver's license'' and ''United States.''

2. Section 383.9, Matter Incorporated by Reference

Subpart H of part 383 currently has general language describing the CDL knowledge and skills testing procedures, testing methods, and passing scores. In order to promote more uniformity among the States, more specific language on administering the tests is needed. Therefore, FMCSA is proposing to incorporate by reference the current edition of AAMVA's ''2005 CDL Test System.''

FMCSA is providing the public an opportunity to comment on the incorporation by reference of this AAMVA ''2005 CDL Test System,'' and would provide similar opportunity before incorporating any updates to the 2005 edition.

Incorporating the AAMVA CDL test system by reference complies with the requirements in 5 U.S.C. 552, which allows agencies to publish rules in the **Federal Register** by referring to materials already published elsewhere. Section 552 authorizes incorporation by reference with the approval of the Director of the Federal Register to reduce the volume of material published in the **Federal Register** and the CFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, would then have the force and effect of law.

3. Section 383.23, Commercial Driver's License

FMCSA proposes to amend § 383.23 by moving current paragraph (c) on learner's permits to a new § 383.25 that would contain expanded requirements for CLPs. A new paragraph (b)(3) adds operating with a CLP to the list of exceptions to the requirement to hold a

CDL, if the CLP is properly issued under the requirements of proposed § 393.25.

4. Section 383.25, Commercial Learner's Permit

FMCSA proposes to add a new § 383.25 for the expanded requirements for CLPs. Under the proposed rules, a driver would have to obtain a CLP and hold it for at least 30 days before becoming eligible for a CDL. Section 383.25 would also contain specific requirements for the CDL holder who must accompany the CLP holder and would specify the eligibility requirements for the CLP applicant, such as age and knowledge and skills tests. Section 383.25 would also specify that the CLP must be separate from the CDL and that it may be valid for no more than 180 days, with one 90 day renewal.

5. Section 383.37, Employer's Responsibilities

FMCSA proposes to amend § 383.37 to specify that an employer may not allow a driver to operate a CMV without or in violation of a current CLP or CDL with the proper class or endorsements. Although it is obvious that a driver must have a proper license to legally operate a CMV, adding the specific prohibition to § 383.37 would facilitate enforcement actions against negligent employers.

6. Section 383.51, Disqualification of Drivers

FMCSA proposes to add references to CLPs throughout § 383.51 to make a person with a CLP subject to the same disqualifying offenses that apply to a CDL holder in § 383.51, Tables 1 and 2, including those that occur when operating a non-CMV.

7. Section 383.71, Driver Application Procedures

Section 383.71 would be completely revised to add specific application procedures for CLPs and to amend the application procedures for CDLs by updating the requirements for providing information on the applicant's actual address or domicile and for surrendering previously issued licenses.

8. Section 383.72, Implied Consent to Alcohol Testing

Section 383.72 would be revised to apply the section to CLP holders as well as CDL holders.

9. Section 383.73, State Procedures

Section 383.73 would be revised to impose specific requirements for how States may issue CLPs. Also, the requirements on State procedures for processing CDL applications would be amended to update the requirements for providing information on citizenship and the applicant's actual address or domicile; for completing the Social Security Number verification; for surrendering previously issued licenses; and to limit CDLs to a maximum term of 8 years before renewal is required. Also, to control against use of false addresses, the State would be required to mail the initial CLP or CDL to the address provided on the application form. Three other fraud control measures would be added: A requirement that the State have at least two persons check and verify all documents involved in the licensing process; a requirement that the State establish computer system controls that prevent changes to records of transactions, unless they are done by supervisory personnel only and are documented; and a requirement that the State cancel or revoke a CDL if the holder has been convicted of fraud related to the CDL application or testing process.

10. Section 383.75, Third Party Testing

Section 383.75 would be revised to add new requirements to ensure that third party testers use the same materials and procedures as State testers, to enhance State oversight, and to facilitate the prevention of fraud.

Specifically, the third party tester would be required to use the same test scoring sheets, written instructions for applicants, and skills tests as the State uses. Also, the third party tester would be required to use designated road test routes that have been approved by the State.

Enhanced oversight measures would include the following:

- The State would be required to conduct an annual on-site inspection of the test sites.
- The third party tester and individual examiners employed by the tester would be required to apply for a skills testing certificate. To qualify for the certificate, the individual examiners would have to successfully complete a formal skills test examiner training course.
- The third party tester would have to submit a weekly schedule of skills test appointments for the following week. This would allow State inspectors to plan visits to the testing sites on days when tests will be administered.
- The third party tester would have to maintain copies of records showing compliance with these rules at its principal place of business.
- The third party tester would have to conduct at least 50 skills tests annually and each individual examiner employed by the tester would have to conduct at least 10 skills test annually. These minimums would ensure that the costs of oversight do not exceed the benefits to the State that accrue from having the third party tester. In addition, the minimums would ensure that each tester and examiner is conducting enough tests to maintain his/her expertise. However, FMCSA is aware that some States have approved motor carriers as third party testers to conduct tests for their own employees. FMCSA specifically requests comments on whether the requirements for minimum numbers of tests per year would adversely affect such motor carriers.

Measures intended to ensure the integrity of the test process would include the following:

- At least annually, State employees would be required to co-score actual skills tests along with the third party tester to compare pass/fail results.
- The results of any test conducted by a third party examiner would have to be transmitted to the State through a secure electronic means.
- The third party tester would be required to maintain a bond in an amount specified by the State. In cases where a third party examiner has been involved in fraudulent activities, the State may decide that all or some of the drivers that had been tested by that examiner should be retested to ensure that they are qualified to hold a CDL. The bond would be used to reimburse the State for the expense of retesting these drivers.

11. Section 383.77, Substitute for Driving Skills Test

FMCSA proposes to remove and reserve § 383.77 because this section was originally intended to be used only for the initial testing cycle prior to April 1, 1992, when the CDL program was initiated. It is no longer needed.

12. Section 383.79, Skills Testing of Out-of-State Students

Section 383.79 would be added to prescribe how a State must handle the administration of skills tests to applicants who have taken driver training in that State, but are domiciled in a different State.

13. Section 383.93, Endorsements

Section 383.93 would be amended to add the requirement that the only endorsement allowed on a CLP is a passenger endorsement, which allows a CLP holder to only drive an empty bus, accompanied by a CDL holder, for training purposes. The States would also be required to use the codes listed in § 383.153 on the CLP or CDL to show

the endorsements for which that driver has qualified.

14. Section 383.95, Air Brake Restrictions

FMCSA proposes to broaden the scope of this section to address other types of restrictions, such as the automatic transmission, non-fifth wheel, and passenger vehicle restrictions.

15. Section 383.110, General Requirement

FMCSA proposes to update the requirements in § 383.110 and the other sections in subpart G to require States to use the knowledge and skills testing standards developed jointly by AAMVA and FMCSA. The current requirements are general and do not mandate that all States follow the same specific requirements for designing the knowledge and skills tests.

16. Section 383.111, Required Knowledge

Section 383.111 would be revised to add more details to the lists of topics that must be included in the knowledge tests. The new requirements include 20 general areas of knowledge.

17. Section 383.113, Required Skills

Section 383.113 would be revised to add more details to the lists of skills that must be demonstrated in the skills tests. The new items include requirements relating to pre-trip vehicle inspections, basic vehicle control, and safe on-road driving skills.

18. Sections 383.115, Requirements for Double/Triple Trailers Endorsement, 383.117, Requirements for Passenger Endorsement, 383.119, Requirements for Tank Vehicle Endorsement, 383.121, Requirements for Hazardous Materials Endorsement, and 383.123, Requirements for a School Bus Endorsement

FMCSA proposes to amend §§ 383.115–383.123 to add general operating practices and procedures to the list of topics applicants must know for each of these endorsements. This new category covers questions in the tests that do not fit into the other categories, but address important safety issues. In addition, § 383.123(a)(1) would be amended to clarify that applicants for a school bus endorsement must also obtain a passenger vehicle endorsement, that is, both a ''P'' and an ''S'' endorsement to qualify to operate a school bus.

19. Appendix to Subpart G

FMCSA proposes to remove the appendix to subpart G of part 383. It contains sample guidelines for States to use in choosing topics to include in the knowledge and skills tests that they administer to CDL applicants. The appendix would not be needed because FMCSA proposes to incorporate by reference the AAMVA 2005 Requirements Document as the Federal knowledge and skills testing standard. (See proposed § 383.9.) The AAMVA test package contains the specific tests and manuals that States would be required to use.

20. Section 383.131, Test Manuals

FMCSA proposes to revise paragraphs (a) and (b) of § 383.131 to require States to use the current 2005 edition of AAMVA's ''Model Commercial Driver Manual'' and ''Model CDL Examiner's Manual'' that are components of AAMVA's ''2005 CDL Test System'' and are to be incorporated by reference under proposed § 383.9.

FMCSA also proposes to add a new paragraph (c) to § 383.131 to require States to record and retain the knowledge and skills test scores for each applicant. As part of a fraud detection and prevention program, the test scores will be verified before the issuance of a CLP or CDL.

21. Section 383.133, Test Methods

FMCSA proposes to revise § 383.133 to require States to use the current edition of AAMVA's ''2005 CDL Test System'' that would be incorporated by reference under proposed § 383.9 to develop, administer, and score the knowledge and skills tests for each vehicle group and endorsements.

FMCSA also proposes to add language to § 383.133 to specify in what form the knowledge test may be administered. These changes would incorporate the current guidance on the testing methods to be used by States.

22. Section 383.135, Passing knowledge and Skills Tests

FMCSA proposes to change the title of § 383.135 to better reflect the content of the proposed revisions to the section. The revisions would include a clarification as to what restrictions must be placed on a CLP or CDL when an applicant fails the air brake and/or combination vehicle knowledge tests or performs the skills tests in a vehicle that is not equipped with full air brakes, air over hydraulic brakes, manual transmission, and/or in a combination vehicle without a fifth wheel trailer connection. The revision also proposes to clarify that an applicant does not have to take the complete set of skills tests to remove one or more of the restrictions. It is also proposed that the current 2005 edition of AAMVA's ''2005 CDL Test System'' be used by the States in scoring the skills tests.

23. Subpart J, Commercial Driver's License Document

Subpart J of part 383, including §§ 383.151 and 383.153, would be expanded in scope to address the document requirements for CLPs as well as for CDLs.

24. Section 383.155, Tamperproofing Requirements

Section 383.155 would be revised to apply the requirements for tamperproofing to CLPs, as well as CDLs.

B. Proposed Changes to Part 384

The purpose of part 384, State Compliance With Commercial Driver's License Program, is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)). Part 384 includes the minimum standards for the actions States must take to be in substantial compliance with each of the 21 requirements of 49 U.S.C. 31311(a), establishes procedures for FMCSA determinations of State compliance, and specifies the consequences of State noncompliance.

1. Sections 384.105, Definitions; 384.204, CDL Issuance and Information; 384.205, CDLIS Information; 384.207, Notification of Licensing; 384.208, Notification of Disqualification; 384.209, Notification of Traffic Violations; 384.210, Limitations on Licensing; 384.212, Domicile Requirement; Section 384.214, Reciprocity; 384.220, Problem Driver Pointer System Information; 384.225, Record of Violation; 384.226, Prohibition on Masking Convictions; 384.231, Satisfaction of State Disqualification Requirement; and 384.405, Decertification of State CDL Program

These sections would be amended to apply the requirements for State issuance of CDLs to the issuance of CLPs as well. In addition, § 384.220 would be revised to refer to the Problem Driver Pointer System instead of the National Driver Register.

2. Section 384.206, State Record Checks

This section would be revised to apply the requirements for State issuance of CDLs to the issuance of CLPs as well. The proposal would also add specific required actions that States must take as a result of receiving

adverse information about an applicant or CLP/CDL holder.

3. Section 384.211, Surrender of Old Licenses

This section would be revised to specify that previously issued licenses, including a CLP or non-CDL, must be surrendered not only when a CDL is initially issued, but also when a CDL is upgraded or transferred.

4. Section 384.217, Drug Offenses

Section 384.217 would be revised to add commission of certain felonies committed by CDL holders in non-CMVs to the list of offenses for which the States must disqualify persons from operating CMVs. This change corrects an omission in the current regulations. Current § 384.217 fails to require the State to enforce § 383.51(b) for offenses in both CMVs and non-CMVs.

5. Section 384.227, Record of Digital Image or Photograph

Section 384.227 would be added to require States to include a digitized color photograph in the driver history records and to review the photograph when replacement licenses are issued. This requirement would prevent a different individual from obtaining a license by falsely claiming that a CDL had been lost or stolen.

6. Section 384.228, Examiner Training and Record Checks

Section 384.228 would be added to impose new training requirements and background checks for examiners. This section would apply to all examiners, both those employed by the State and those employed by third party testers. The State would be required to establish initial and refresher training that meets or exceeds the requirements established in this section. The established requirements for the examiner and refresher training are based on the December 2006 edition developed by AAMVA, titled ''International Certified Commercial Certification Program.'' This program which supplements AAMVA's ''2005 CDL Test System,'' was developed by AAMVA in cooperation with FMCSA. Therefore, a test examiner certified under this program who maintains the certification will meet these proposed training requirements.

All examiners would have to successfully complete the CDL test examiner training course and pass an examination before the State may certify them to administer CDL tests.

The State would also have to conduct initial and annual criminal background checks of all test examiners. The State would also be required to maintain records of the training and certification of the examiners and the results of the criminal background checks. The State would be required to rescind the examiner's certification if he/she does not successfully complete the refresher training or fails the annual criminal background check.

7. Section 384.229, Skills Test Examiner Auditing and Monitoring

Section 384.229 would be added to require States to audit and monitor both State and third party examiners who work for third party testers to ensure that the CDL program is working as intended. States would be required to conduct unannounced annual on-site inspections of third party tester and examiner records to compare the results of the tests of applicants who receive CDLs with the scoring sheets for the tests. States would also be required to conduct both covert and overt monitoring of both State and third party skills test examiners. The State would have to establish and maintain databases that contain information on each examiner, information on the tests administered by each examiner, and the results of audits and monitoring, including the pass/fail rates of individual examiners. This would enable the State to identify examiners who have unusually high pass or failure rates.

8. Section 384.301, Substantial Compliance—General Requirements

Section 384.301 would be amended by adding a new paragraph (c). FMCSA has always given the States 3 years after the effective date of any new rule to come into substantial compliance with new CDL requirements. This allows the States time to pass any necessary new legislation and modify State systems to comply with the new requirements, including CDLIS. New paragraph (c) would specify the 3 year compliance date for States.

C. Proposed Changes to Part 385

One of the purposes of part 385, Safety Fitness Procedures, is to establish the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of ''unsatisfactory'' from operating a CMV. FMCSA proposes to add § 383.37(a) as an acute violation in appendix B of part 385. Allowing a driver to operate a CMV without a CLP or CDL, or without the appropriate endorsement, is a serious matter warranting classification as acute.

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as amended by E.O. 13258 and E.O. 13422, and the meaning of Department of Transportation regulatory policies and procedures because of public and Congressional interest in CMV licensing issues. However, we expect the costs of the proposed rule to be fairly low. The Agency has prepared a preliminary regulatory analysis analyzing the costs and benefits of this undertaking, summarized below. A copy of the complete preliminary analysis document is included in the docket referenced at the beginning of this notice.

Many of the provisions of this rule would not impose significant costs on the States or industry either because most States are already complying with the proposed requirements or because other regulations have already brought the States or industry into compliance with these rules (for instance, the minimum age requirement for CLPs would not have any costs associated with it because drivers under 18 are banned by current regulations from operating CMVs in commerce). Those provisions estimated to be of minimal economic significance include: strengthening the legal presence requirements; Social Security number verification; surrender of CLP, CDL, and non-CDL documents; maximum issuance and renewal periods for CLPs and CDLs; establishing a minimum age for a CLP; limiting endorsements on the CLP to passenger only; methods of administering the CDL test; new standardized endorsement and restriction codes; motor carrier prohibitions; and incorporating regulatory guidance into text. Other provisions in this rule do have some cost implications, and include minimum standards for issuing a CLP; checking for previous driving offenses by a CLP holder; CDL testing requirements for out-of-State training schools; State reciprocity for CLPs; updating Federal knowledge and skills test standards; and incorporating certain of the SAFE Port Act provisions.

Of the proposed rule changes that have potential cost implications, many affect the States by requiring extra steps in processing CLPs and CDLs. These include recording CLPs on CDLIS and

making the CLP a tamper-proof document (under minimum uniform standards for issuing CLPs); checking for previous driving offenses by CLP/CDL holders (which would require an additional PDPS record check); and implementing section 703a of the SAFE Port Act. We estimate that these provisions, taken together, would add 5 minutes to the amount of time it takes a State to process a license document. In addition, an extra $1.40 per CLP issued would be incurred to make the CLP tamper-proof, and a $1 cost would be incurred for each CLP placed on CDLIS that is not eventually converted into a CDL. States are charged $1 for each record on CDLIS. Since both CDLs and CLPs count as a record, each CLP recorded on CDLIS that is not converted to a CDL costs States an extra $1 per year when compared to the status quo, in which States only have to record CDLs on CDLIS. Converting a CLP to a CDL does not result in an additional record on CDLIS, so the CLP holders who successfully convert to CDLIS would be added to the system anyway and would therefore not result in an extra cost to the States. Taking all of these costs together, the estimated cost of these provisions is $1.76 million annually.

The SAFE Port Act provisions would result in additional costs to the States. These provisions would require the States to enhance training programs for CDL skills test examiners, and to conduct additional oversight of these examiners to ensure that they are properly conducting skills tests and to deter fraud. All States currently have training programs for skills test examiners, but these programs vary widely. It is estimated that the requirements of this rule would result in the need for States to add an additional day to their current training program for skills test examiners. In addition, there is a continuing or refresher training requirement incorporated into these provisions, and it is estimated that this continuing education requirement would necessitate 16 hours of additional training for skills test examiners every 4 years. The cost of these training requirements is $280,000 for the additional day of initial training, and $560,000 for the continuing education requirement, which would be incurred every 4th year after the year of implementation. It is assumed that this training would facilitate the States' adoption of the new knowledge and skills testing standards, and that, therefore, no additional costs would be incurred for adoption of these standards.

In addition to improved training, this rule would require States to enhance monitoring of skills test examiners. These measures would include an annual review of each skills test examiner location, and overt and covert monitoring of the skills test examiners at each location, to protect against fraud and ensure that examiners are conducting the test properly. States are currently required to conduct reviews of third party testers annually, and to overtly monitor third party testers in one of two ways. Some States monitor third party examiners by re-testing a portion of the drivers the third party tested, to ensure that those drivers have the skills to pass the test. In other States, a State representative takes the CDL skills test from examiners at each location as if the State employee were a driver taking the test. The intent of both of these measures is to ensure that the skills test examiners at each third party testing organization are properly conducting tests.

Some States are already conducting both covert and overt monitoring of skills test examiners, but others provide much less oversight. However, all States should be conducting annual reviews of all third party testers and conducting some monitoring of the examiners to ensure that they are conducting the test properly, and to protect against fraud. This rule would require the States with less rigorous oversight to track the performance and record of all skills test examiners, and invest in enhanced enforcement, which may mean hiring or re-designating a certain number of enforcement personnel to engage in covert and overt monitoring of CDL examiners.

The Agency has personnel who also conduct reviews and overt and covert monitoring of skills test examiners. These reviews typically take one day for both overt and covert monitoring. This analysis will assume that each State is currently conducting overt reviews/audits of skills test examiners and overt monitoring of skills test examiners as required by current regulations. Each State would, therefore, have to add the covert monitoring piece to its oversight program, and covert reviews would take approximately half a day to conduct. The Agency estimates that there are somewhere between 500 and 1,800 skills test locations in the United States. Taking a rough midpoint between these two figures yields an estimated 1,200 skills testing sites. Halving this number to account for the half day covert review of each sight yields an estimated 600 monitoring days each year. Assuming each examiner works 250 days a year, an additional 2.4 full time equivalent examiners would be required nationwide to conduct monitoring of skills testing sites. According to the United States Bureau of Labor Statistics, detectives and criminal investigators make an annual salary of $58,750. We inflate this figure by 30 percent to account for the value of non-monetary benefits earned by people in this occupation, for a total annual compensation of $76,375. The cost associated with the additional 2.4 full time equivalent examiners is $183,000. This would be the annual cost of the enhanced monitoring of skills test examiners.

Table 1 below presents the total cost of these provisions over 10 years. In addition to the cost of specific provisions contained in this rule, FMCSA estimated $200,000 per State for the minor IT upgrades that may be needed to comply with these requirements. These costs are presented in the IT Upgrades row. Years 6–10 mimic years 2–5 with respect to cost, and are therefore lumped together in one column. As can be seen, the total cost of these provisions vary between $1.9 and $12 million per year. The estimated 10 year cost of this rule would be approximately $26 million.

TABLE 1.—COSTS OF RULE

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
CDL Processing	$1,759,850	$1,759,850	$1,759,850	$1,759,850	$1,759,850	$8,799,250	$17,598,500
Skills Test Training	280,000	0	0	0	560,000	560,000	1,400,000
Covert Monitoring	183,300	183,300	183,300	183,300	183,300	916,500	1,833,000
IT Upgrades	10,200,000	0	0	0	0	0	10,200,000
Total	12,423,150	1,943,150	1,943,150	1,943,150	2,503,150	10,275,750	31,031,500

TABLE 1.—COSTS OF RULE—Continued

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Total, 7 percent discount	12,423,150	1,816,028	1,697,222	1,586,189	1,909,641	6,404,139	25,836,370

Two other provisions of this rule have cost implications. CLP reciprocity and CDL testing requirements for out-of-State driver training school students would serve to reduce costs compared to current practices. Two alternatives to the status quo were considered by the Agency. Both alternatives require State reciprocity in recognizing CLPs issued by other States. One alternative would then allow the State in which training and testing occurs to issue a temporary CDL to out-of-State students who pass that State's skills test. These students would then return to their State of domicile and convert the temporary CDL into a CDL. The other alternative would require States to recognize the results of skills tests conducted in any other State. Under this alternative, the driver would train and test in another State, and then his or her State of domicile would issue a permanent CDL based on the other State's skills test results. The baseline scenario will be referred to as Alternative 1, the temporary CDL scenario will be referred to as Alternative 2, and the skills test scenario will be referred to as Alternative 3.

For those who go out of their State of domicile to train, the options differ regarding the number of licenses (and hence fees) that trainees must obtain.

Currently, drivers who go out of State to train do so in violation of the domicile requirement. Those drivers must obtain a driver's license and a CLP from the State in which they are trained (in addition to, or to replace, the driver's license from their State of domicile). They can either return to their home State to be tested (and they must find a vehicle to be tested in); or, they can be skills tested in the State of training (in which case the training school will usually provide a vehicle for the skills test).

CDL costs, on average, $45.15, although the fees States charge for a driver's license vary widely. The costs of the alternatives being considered here will, therefore, vary widely depending on the State where drivers train and their State of domicile. This analysis will use national average figures to estimate the costs of the rule for the ''average'' driver. The average cost of a CLP is $16.88, and $22.10 for a driver's license. For the purposes of this analysis, it will be assumed that all applicants for a learner's permit already have a driver's license from their State of domicile. The total cost of Alternative 1, which requires drivers to obtain both a new driver's license in the training State ($22.10), a CLP in the training State ($16.88), a CDL in the training State ($45.15), and a CDL transfer to their State of domicile ($45.15), will average $129.28 per out-of-State trainee.

For Alternative 2, driver trainees must get a CLP from their State of domicile, attend training and be tested out of State, be issued an out-of-State temporary CDL, and return to their home State to convert the temporary CDL into a CDL from their home State. While the average cost of a regular CDL is known, FMCSA has no information on what States might charge for issuing a temporary out-of-State CDL. It will be assumed here that the cost of the temporary CDL is the same as the cost of a CLP, as both are temporary documents. Given this assumption, the cost to the driver of this alternative would be $78.91, consisting of the cost of a CLP, a temporary CDL, and a permanent CDL in the driver's State of domicile. The driver would not have to obtain a new base license from the training State because, due to CLP reciprocity, the driver would be able to use his current driver's license from his State of domicile to train in another State.

The final alternative would be to require States of domicile to accept skills test results from a training facility in another State. Under this scenario, the driver would incur the cost of one CLP, issued by his or her State of domicile, and one CDL, also issued by the State of domicile. The total cost to the driver of this alternative would therefore be $62.03. This alternative obviously minimizes costs for driver trainees. The driver-related costs of the three alternatives are summarized in Table 2 below. As can be seen, Alternative 2 cuts the fees associated with getting a CDL by more than 50 percent for out-of-State driver trainees.

TABLE 2.—COST PER DRIVER OF OUT-OF-STATE TRAINING ALTERNATIVES

	Status quo (with out-of-State training)	Alternative 1 (temporary CDL)	Alternative 2 (skills test score acceptance)
Driver's License Costs	$22.10	N/A	N/A
Learner's Permit Costs	16.88	$16.88	$16.88
CDL Costs	90.30	62.03	45.15
Total Cost to Driver	129.28	78.91	62.03

Table 3 below presents the total cost savings of Alternatives 2 and 3 in comparison to Alternative 1. These cost figures are based on an estimated 610,000 CLPs issued per year. It is assumed that approximately 20 percent of CDL trainees currently attend out-of-State training schools, so the total cost is based on 122,000 out-of-State drivers training in other States, and the licensing cost implications. Related to the licensing costs described for these three Alternatives are costs to CDL applicants for obtaining a license. CDL applicants must pay licensing fees, but also lose time at a State driver licensing agency (SDLA) office every time they must obtain a new license or permit. Drivers must apply in person for a CDL, CLP, or to transfer a CDL from one State to another. Since each of the alternatives described here differs in the number of licenses or permits the driver must obtain, they vary in respect to the amount of time drivers must spend at SDLA offices. All of the alternatives are equivalent to one another for drivers

who train in his/her State of domicile. Only drivers who train out of State are affected. For these drivers, Alternative 1 (the status quo) requires 4 license transactions (regular operator's license from the training State, CLP from the training State, CDL from the training State, and a license transfer back to the State of domicile); Alternative 2 requires 3 licensing transactions (CLP from State of domicile, temporary CDL from training State, and permanent CDL from State of domicile); and Alternative 3 requires 2 licensing transactions (CLP from State of domicile, and CDL from State of domicile).

We assume that each license transaction will take approximately 30 minutes of time, and that a trip to the SDLA will take, on average, 30 minutes round trip (15 minutes each way), for a total of an hour per licensing transaction. We value this time at the average wage for production (manufacturing) workers, which is $14.37. We inflate this figure by 30 percent to account for the value of benefits to $18.68. The cost for each Alternative can then be calculated by multiplying the number of licensing transactions by the hourly compensation rate. For Alternative 1, this cost is 4 × $18.68 = $74.72. Alternative 2 has a per trainee cost of $56.04. Alternative 3 has a per trainee cost of $37.36. Given the estimated 475,000 licenses issued per year and the assumption that 20 percent of trainees go out-of-State for driver training, we apply the costs for each alternative to 122,000 drivers-in-training. Table 3 summarizes these costs. The final row of this table, cost savings over baseline, provides the estimated benefits of accommodating out-of-State training under both alternatives to the current situation.

TABLE 3.—TOTAL COST SAVINGS FOR ALTERNATIVES

	Alternative 1	Alternative 2	Alternative 3
Number of licensing transactions	4	3	2
Total Licensing fees (122,000 drivers)	$15,772,160	$9,627,020	$7,567,660
Lost time cost	9,115,840	6,836,880	4,557,920
Total	24,888,000	16,463,900	12,125,580
Cost Savings over baseline	NA	8,424,100	12,762,420

Table 4 below presents a comparison of the benefits and costs of this rule over 10 years, including the costs discussed above for CDL processing, skills test examiner training, etc. Costs for Alternative 1, the baseline scenario, are not presented because they are analogous to the costs as presented in Table 1. The annual benefits presented for Alternatives 2 and 3 are the annual cost savings that accrue to drivers due to accommodating out-of-State training. As can be seen, both alternatives have positive net benefits. This NPRM proposes to adopt Alternative 3.

TABLE 4.—COMPARISON OF TOTAL BENEFITS AND COSTS

	Alternative 2	Alternative 3
10 Year Total Cost, from Table 1 (7 percent discount)	$25,836,370	$25,836,370
Total Benefit	63,309,068	95,912,550
Net Benefit	37,472,698	70,076,180

Safety Benefits

Most of the provisions of the NPRM are intended to have positive safety benefits, including the minimum age requirement for CLPs, requiring that the general knowledge and P endorsement knowledge tests be passed prior to issuing a CLP or P endorsement on a CLP, and the standardization of CDL knowledge and skills testing. Although the new tests may be somewhat more rigorous than the current versions being used by the States, it is unclear whether the new test models would be so rigorous as to lower pass rates for applicants or significantly improve driver safety. However, this rule should improve detection and deterrence of fraud, and significant safety benefits may result from preventing unqualified drivers from fraudulently obtaining CDLs.

It is reasonable to argue that drivers who cannot develop the skills necessary to pass either the skills or knowledge test would pose an increased safety risk. Most States allow drivers multiple chances to pass both the knowledge and skills test, and with proper training, most drivers should be able to develop the skills necessary to pass. Those who cannot have demonstrated that they are incapable of meeting a safe minimum standard for controlling their vehicle and, therefore, pose an increased risk to the public.

The average number of large CMV crashes over the past 5 years for which statistics are available is 420,000 per year, rounded to the nearest 1,000. On average, a large truck crash is valued at $91,112 per crash (including property-damage-only crashes). A non fatal injury crash has an estimated cost of $195,258, and a fatal crash has an estimated cost of $3,604,518. The costs of this rule are estimated at $6.5 million in the most expensive years (those in which continuing education is required of skills test examiners), $5 million in the initial year, and $3.7 million in other years. We have estimated the discounted safety benefits of this rule at approximately $75 million over 10 years. Adding the $75 million in total 10 year net benefits due to crash reduction to the estimated $70 million in 10 year net benefits associated with improved driver training opportunities, this rule has a potential 10 year net benefit of $145 million.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, as amended, (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small entities and determined that this proposed rule would not have a significant impact on a substantial

number of small entities, as defined by the U.S. Small Business Administration's Office of Size Standards. This rulemaking proposal would primarily affect drivers rather than motor carriers, and most of the provisions apply primarily to new drivers rather than drivers who have CDLs. The exception would be drivers who have a class B or C CDL and are applying to move up to a Group A, or drivers seeking specialized endorsements which require a skills test, such as a P endorsement. Since this rule applies to drivers rather than motor carriers, owner-operator motor carriers would be the only small entities directly affected by this rule. We estimate that there are roughly 300,000 owner-operators currently operating in the United States. The drivers of these vehicles may be affected by these regulations if they want to change classes or gain new endorsements on their CDL. For the most part, this proposal has a positive impact on CDL drivers or driver-applicants because it facilitates the ability of these drivers to obtain the lowest cost or most convenient training for their CDL, CDL upgrade, or endorsement skills test.

The other type of entity affected by this rule would be third party skills test examiners. These examiners would undergo periodic covert monitoring, but assuming they are administering the skills test properly, this monitoring would be at no cost to them. In addition, the employees who conduct skills testing may have to participate in additional training in order to remain eligible to conduct skills test examinations. The Agency estimates that there are approximately 1,200 third party skills testing organizations currently in operation in the United States. Information on these organizations is difficult to obtain, but some are affiliated with larger motor carriers. Others would qualify as small businesses, but the Agency is currently unsure of how many might fall into the small business category. We estimate that half, or 600, skills testing organizations are small businesses. These organizations would have to bear the cost of enhanced training of the examiners they employ. These costs were estimated in the Regulatory Impact Analysis at $200 per examiner per day of training, at an average of one-half day of training every year. The cost to these entities would, therefore, be approximately $100 per year per skills test examiner employed. Most skills testers are trucking firms, educational organizations, or municipal organizations that do not derive their primary income from skills testing. Based on Census Bureau data, we estimate that trucking firms have an annual average profit margin of $149,000 per year. The industry as a whole has approximately $15 to $19 billion in annual profits. The Agency believes that each skills test examiner organization would have between 1 and 2 skills testers. This rule would, therefore, cost these entities a maximum of 600 entities × 1.5 skills test examiners × $100 = $90,000 per year. Given these costs, the Agency does not believe that this rule has a significant impact on a substantial number of small businesses.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128 million or more in any 1 year.[5] The Unfunded Mandates Reform Act requires new Federal regulations to be accompanied by an analysis of their fiscal impacts on State, local, and tribal governments and on private industry. Although the attached regulatory evaluation provides much of this information, it will be summarized here, with an emphasis on effects on State and local governments, since this proposed rule does not have any major effects on private industry. Many of the provisions in this proposed rule would impact the States, but the size of this impact would be relatively small. The total annual cost of the rule is estimated at between $1.96 million and $12 million per year. These costs would primarily be imposed upon the States, who would bear the cost of processing driver's licenses, training and monitoring skills test examiners, and making any changes to computer systems required to implement these changes.

The quantified benefits of this rule are the reduced cost to driver-applicants that would be realized by implementing either of the two alternatives for accommodating out-of-State driver training. These benefits would accrue primarily to driver-applicants who choose to obtain driver training in a State other than their State of domicile. Streamlining the out-of-State training process would enable these drivers to avoid the licensing fees associated with obtaining a license in the State in which they attend training. These benefits have been estimated at approximately $6.6 million per year for Alternative 2, and $10 million per year for Alternative 3. These benefits outweigh the costs to the States. The reduction in the number of license transactions a driver must complete reduces the number of license transactions States must process.

It has been assumed in this analysis that the price of each license transaction represents the cost to the State for processing that transaction. However, in some States this may not be the case—their license fees are set by the State legislature, and may be below or above the processing costs incurred. For States in which the licensing fee charged is above the cost of processing the license, a reduction in the number of processed licenses may negatively impact State revenues. Those States for which the fee is below processing costs would experience a net reduction in operating costs that exceeds this loss in revenue. On average, the reduction in licensing fees collected would average slightly less than $120,000 per year per State for Alternative 2, and $161,000 per year per State for Alternative 3. Given the modest cost of this rule, the Agency finds that it would not have a significant impact on the States or local governments, as defined by an annual cost of $128 million in any one year.

Executive Order 12988 (Civil Justice Reform)

This proposed action would meet 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.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

[5] The unfunded mandate threshold was established in 1995 at $100 million in costs to State or local governments, or private industry, in any one year. This figure has been adjusted using the Consumer Price Index to 2005 dollars.

Executive Order 13132 (Federalism)

FMCSA has analyzed this proposed rule in accordance with the principles and criteria of Executive Order 13132, ''Federalism,'' and has determined that it does not have federalism implications.

The Federalism Order applies to ''policies that have federalism implications,'' which it defines as regulations and other actions 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.'' Sec. 1(a). The key concept here is ''substantial direct effects on the States.'' Sec. 3(b) of the Federalism Order provides that ''[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.''

The proposed rule would amend the commercial driver's license (CDL) program authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. chapter 313). States have been issuing CDLs in accordance with Federal standards for well over a decade. The CDL program does not have preemptive effect. It is voluntary; States may withdraw at any time, although doing so would result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule would make only small, though numerous, incremental changes to the requirements already imposed on participating States, FMCSA has determined that it would not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

Nonetheless, FMCSA recognizes that this rule would have an impact on the States and their commercial driver licensing operations. Most significantly, it will require all participating States to implement a commercial learner's permit (CLP) and prohibit the issuance of a CDL unless the applicant has first obtained a CLP and held it for a minimum of 30 days. The Agency hopes drivers will use this interval to obtain formal training. States will also be required to use the American Association of Motor Vehicle Administrators' ''2005 CDL Test System'' to administer knowledge and skills tests. Over the years, FMCSA and the States have identified CDL program deficiencies that need to be addressed. The Department's Office of Inspector General has focused attention on measures to prevent licensing fraud. Measures to address these issues, and others included in this NPRM, would improve the effectiveness of the CDL program, but would also require participating States to change their programs in a variety of ways. In recognition of this fact, the Agency has notified the National Governor's Association (NGA) of these proposed regulatory changes by letter to ensure that State and local governments will be able to raise Federalism issues during the comment period for the NPRM.

Privacy Impact Assessment

Section 522 of the FY 2005 Omnibus Appropriations Act, enacted December 8, 2004, (Note to 5 U.S.C. 552a) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rulemaking would require new minimum Federal standards for States to issue commercial learner's permits (CLPs) as a pre-condition for a commercial driver's license (CDL). It would require that an applicant for a CLP must first pass a knowledge test which complies with prescribed minimum standards and may have only one CLP at a time; and that the data on each CLP holder must be added to the driver's record in the Commercial Driver License Information System (CDLIS). Therefore, the information will be held to the same level of security as CDLIS.

Although each State would be required to create a CDLIS record for each CLP it issues, the Privacy Act applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The Commercial Driver License Information System (CDLIS) records, however, are not transferred from FMCSA to the States; they are created and maintained by the States. FMCSA has determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking would affect a currently-approved information collection covered by the OMB Control No. 2126–0011 titled, ''Commercial Driver Licensing and Testing Standards.'' This information collection has an annual burden of 1,391,456 hours, and will expire on February 28, 2011.

This NPRM would update and provide more uniform procedures for ensuring that the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle. It would also establish the minimum information that must be on the CLP document and the electronic driver's record in CDLIS, make it a tamperproof document, and establish maximum issuance and renewal periods for the CLP and CDL. The FMCSA believes this proposal would result in a significant increase in the annual burden hours for this information collection. The major increase in annual burden hours will probably result from the implementation of the new CLP requirements.

National Environmental Policy Act

The agency analyzed this proposed rulemaking for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under Paragraph 4.s of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations concerning requirements for drivers to have a single commercial motor vehicle driver's license. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General conformity requirement since it since it involves rulemaking and policy development and issuance.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a ''significant energy action'' under that Executive Order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 385

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Safety fitness procedures.

For the reasons explained in the preamble, FMCSA proposes to amend parts 383, 384, and 385 of title 49 of the Code of Federal Regulations as set forth below:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; sec. 214 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

2. Amend § 383.5 by removing the definition for *serious traffic violation* in its entirety; by revising the definitions for *commercial driver's license, commercial motor vehicle, disqualification, driver applicant, endorsement, imminent hazard, nonresident CDL, tank vehicle,* and *United States*; and adding new definitions for *CDL driver, commercial learner's permit, third party skills test examiner*, and *third party tester* to read as follows:

§ 383.5 Definitions.

* * * * *

CDL driver means a person holding a CDL or a person required to hold a CDL.

* * * * *

Commercial driver's license (CDL) means a license issued to an individual by a State or other jurisdiction, in accordance with the standards contained in this part, which authorizes the individual to operate a class of a commercial motor vehicle.

* * * * *

Commercial learner's permit (CLP) means a permit issued to an individual by a State or other jurisdiction, in accordance with the standards contained in this part, that, when carried with a valid driver's license issued by the same State or jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle, when accompanied by a holder of a valid CDL, for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of hazardous materials as defined in this section.

* * * * *

Disqualification means any of the following three actions:

(1) The suspension, revocation, or cancellation of a CLP or CDL by the State or jurisdiction of issuance.

(2) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(3) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this subchapter.

Driver applicant means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL or to obtain or renew a CLP.

* * * * *

Endorsement means an authorization to an individual's CLP or CDL required to permit the individual to operate certain types of commercial motor vehicles.

* * * * *

Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

* * * * *

Nonresident CLP or Nonresident CDL means a CLP or CDL, respectively, issued by a State under either of the following two conditions:

(1) To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1).

(2) To an individual domiciled in another State meeting the requirements of § 383.23(b)(2).

* * * * *

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

Third party skills test examiner means a person employed by a third party tester who is authorized by the State to administer the CDL skills tests specified in subparts G and H of this part.

Third party tester means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills tests specified in subparts G and H of this part.

United States means the 50 States and the District of Columbia.

* * * * *

3. Add § 383.9 to subpart A to read as follows:

§ 383.9 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The

materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation is incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Materials incorporated.* The American Association of Motor Vehicle Administrators' (AAMVA's) ''2005 CDL Test System,'' incorporated by reference for subpart H of this part, includes the following individual documents:

(1) ''Model Commercial Driver License Manual'';

(2) ''Model CDL Examiner's Manual'';

(3) ''2005 Requirements Document For Use In Developing Computer-Generated Multiple-Choice CDL Knowledge Tests''; and

(4) ''2005 Test Item Summary Forms'' for CDL General Knowledge, Air Brakes, Combination Vehicles, Doubles/Triples, Hazardous Materials, Passenger Transport, School Bus, and Tank Vehicle knowledge tests.

(c) *Addresses.* (1) All of the materials incorporated by reference except the ''2005 Test Item Summary Forms'' are available for inspection at:

(i) The Department of Transportation Library, 1200 New Jersey Avenue, SE., Washington, DC 20590. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(2) Information and copies of all of the materials incorporated by reference except the ''2005 Test Item Summary Forms'' may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd., Suite 400, Arlington, VA 22203.

4. Revise § 383.23 to read as follows:

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) No person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CLP or Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.[1]

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Nonresident CLP or Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

(3) If an individual possesses a commercial learner's permit (CLP), as defined in § 383.5, the individual is authorized to operate a class of CMV as provided by the CLP in accordance with § 383.25.

5. Add § 383.25 to read as follows:

§ 383.25 Commercial learner's permit (CLP).

(a) A CLP is considered a valid commercial driver's license for purposes of behind-the-wheel training on public roads or highways, if all of the following minimum conditions are met:

(1) The CLP holder is at all times accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder, or directly behind the driver in the case of a passenger vehicle, and must have the CLP holder under observation and direct supervision.

(2) The CLP holder holds a valid driver's license issued by the same jurisdiction.

(3) The CLP holder must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(4) The CLP holder must be 18 years of age or older.

(5) A CLP holder with a passenger (P) endorsement must have taken and passed the P endorsement knowledge test. A CLP holder with a P endorsement is prohibited from operating a CMV carrying passengers. The P endorsement must be class specific. All other Federal endorsements are prohibited on a CLP.

(6) The CLP holder does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) The CLP must be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 90 days without requiring the CLP holder to retake the general and endorsement knowledge tests.

(d) The issuance of a CLP is a precondition to the issuance or upgrade of a CDL. The CLP holder is not eligible to take the CDL skills test in the first 30 days after initial issuance of the CLP.

6. Revise § 383.37 to read as follows:

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV that violates any restriction on the driver's CLP or CDL.

(b) During any period in which the driver has a CLP or CDL suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.

(c) During any period in which the driver has more than one CDL.

(d) During any period in which the driver, or the CMV he or she is driving, or the motor carrier operation, is subject to an out-of-service order.

(e) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

7. In § 383.51:

A. Revise paragraph (a);

B. Revise paragraph (b) introductory text and the headings for Table 1;

[1] Effective December 29, 1988, the Administrator determined that commercial driver's licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

C. Revise paragraph (c) introductory text and the headings for Table 2;

D. Revise paragraph (d) introductory text and the headings for Table 3; and

E. Revise paragraph (e) introductory text and the headings for Table 4 to read as follows:

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A person required to have a CLP or CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) The disqualification period must be in addition to any other previous periods of disqualification.

(6) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for . . .

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for. . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for. . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for. . .

* * * * *

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for. . .

* * * * *

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .

* * * * *

8. Revise § 383.71 to read as follows:

§ 383.71 Driver application procedures.

(a) *Commercial Learner's Permit.* Prior to obtaining a CLP, a person must meet all of the following requirements:

(1) The person must be 18 years of age or older and provide proof of his/her age.

(2) The person must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle group that person operates or expects to operate.

(3) The person must certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

(4) The person must provide to the State of issuance the information required to be included on the CLP as specified in subpart J of this part.

(5) The person must provide to the State proof of citizenship or immigration status as specified in Table 1 of this section or obtain a non-resident CLP as specified in paragraph (f) of this section.

(6) The person must provide proof that the State to which application is made is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(7) The person must provide the names of all States where the applicant has been licensed to drive any type of motor vehicle during the previous 10 years.

(8) A person seeking a passenger (P) endorsement must have taken and passed the endorsement knowledge test.

(9) A person who operates or expects to operate in interstate commerce, or is otherwise subject to part 391 of this subchapter, must certify that he/she meets the qualification requirements contained in part 391 of this subchapter. A person who operates or expects to operate in interstate commerce, but is not subject to part 391 due to an exception under § 390.3(f) or an exemption under § 391.2, must certify that he/she is not subject to part 391. A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(b) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet all of the following requirements:

(1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to part 391 of this subchapter, must certify that he/she meets the qualification requirements contained in part 391 of this subchapter. A person who operates or expects to operate in interstate commerce, but is not subject to part 391 due to an exception under § 390.3(f) or an exemption under § 391.2, must certify that he/she is not subject to part 391. A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(2) The person must pass a driving or skills test in accordance with the standards contained in subparts F, G, and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party.

(3) The person must certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate.

(4) The person must provide the State the information required to be included on the CDL as specified in subpart J of this part.

(5) The person must certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

(6) The person must surrender his/her non-CDL driver's licenses and CLP to the State.

(7) The person must provide the names of all States where the applicant has previously been licensed to drive

any type of motor vehicle during the previous 10 years.

(8) If the person is applying for a hazardous materials endorsement, he/she must comply with Transportation Security Administration requirements codified in 49 CFR part 1572. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration services (BCIS) Alien registration number.

(9) The person must provide proof of citizenship or immigration status as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

TABLE 1 TO § 383.71.—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR IMMIGRATION

Status	Proof of status
U.S. Citizen	• U.S. Passport. • Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States. • Certification of Birth abroad issued by the U.S. Department of State (Form FS–545 or DS 1350). • Certificate of Naturalization (Form N–550 or N–570). • Certificate of U.S. Citizenship (Form N–560 or N–561).
Lawful Permanent Resident	• Permanent Resident Card, Alien Registration Receipt Card (Form I–551). • Temporary I–551 stamp in foreign passport. • Temporary I–551 stamp on Form I–94, Arrival/Departure Record, with photograph of the bearer. • Reentry Permit (Form I–327).

(10) The person must provide proof that the State to which application is made is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(c) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State of domicile, an applicant must apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant must:

(1) Provide to the new State of domicile the certifications contained in paragraph (b) of this section;

(2) Provide to the new State of domicile updated information as specified in subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and State requirements as specified in § 383.73(c)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(6) Provide to the State proof of citizenship or immigration status as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

(7) Provide proof to the State that this is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(d) *License renewal.* When applying for a renewal of a CDL, all applicants must:

(1) Provide to the State certifications contained in paragraph (b) of this section;

(2) Provide to the State updated information as specified in subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and pass the test specified in § 383.121 for such endorsement.

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(5) Provide to the State proof of citizenship or immigration status as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

(6) Provide proof to the State that this is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(e) *License upgrades.* When applying for a CDL or an endorsement authorizing the operation of a CMV not covered by the current CDL, all applicants must:

(1) Provide the certifications specified in paragraph (b) of this section;

(2) Pass all the knowledge tests in accordance with the standards contained in subparts F, G, and H of this part and all the skills tests specified in paragraph (b)(2) of this section for the new vehicle group and/or different endorsements;

(3) To obtain a hazardous materials endorsement, comply with the requirements specified in paragraph (b)(8) of this section; and

(4) Surrender the previous CDL.

(f) *Nonresident CDL.* (1) A person must obtain a Nonresident CDL:

(i) If the applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, and the Administrator has not determined whether the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of this part.

(ii) If the applicant is domiciled in a State that is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter. That person is eligible to obtain a Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

(2) An applicant for a nonresident CDL must do both of the following:

(i) Complete the requirements to obtain a CDL contained in paragraph (b) of this section. *Exception:* An applicant domiciled in a foreign jurisdiction must provide a foreign issued passport or U.S. issued immigration document granting temporary or indefinite legal status in the U.S. No proof of domicile is required.

(ii) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions include but are not be limited to license suspension or revocation, or disqualification from operating a

commercial motor vehicle for the convictions described in § 383.51. Notifications must be made within the time periods specified in § 383.33.

(3) An applicant for a Nonresident CDL is not required to surrender a previous foreign license.

9. Revise § 383.72 to read as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CLP or CDL or is required to hold a CLP or CDL is considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of §§ 383.51(b), Table 1, item (4) and 392.5(a)(2) of this subchapter. Consent is implied by driving a commercial motor vehicle.

10. Revise § 383.73 to read as follows:

§ 383.73 State procedures.

(a) *Commercial Learner's Permit.* Prior to issuing a CLP to a person, a State must:

(1) Require the applicant to make the certifications, pass the tests, and provide the information as described in § 383.71(a);

(2) Initiate and complete a check of the applicant's driving record as described in paragraph (b)(3) of this section.

(3) Make a CLP valid for no more than 180 days from the date of issuance and provide for renewal of a CLP only for an additional 90 days without the CLP holder having to retake the general and endorsement knowledge tests;

(4) Allow only a group-specific passenger (P) endorsement on a CLP, provided the applicant has taken and passed the endorsement knowledge test. All other Federal endorsements are prohibited on a CLP; and

(5) Complete the Social Security Number verification required by paragraph (g) of this section.

(6) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(a)(5) and proof of State of domicile specified in § 383.71(a)(6).

(b) *Initial CDL.* Prior to issuing a CDL to a person, a State must:

(1) Require the driver applicant to certify, pass tests, and provide information as described in § 383.71(b);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the Problem Driver Pointer System (PDPS) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in 49 U.S.C. 30304(a)(3);

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the request for the complete driving record specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph has been made and noting the date it was done;

(4) Require the driver applicant to surrender his/her non-CDL driver's license and CLP;

(5) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is only required to check the proof of citizenship or immigration status specified in this paragraph for initial issuance of a CLP or Nonresident CDL, transfer of CDL from another State or for drivers renewing a CDL or Nonresident CDL for the first time after [*effective date of final rulemaking*], provided a notation is made on the driver's record confirming that the proof of citizenship or immigration status check required by this paragraph has been made and noting the date it was done;

(6) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(7) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in §§ 383.71(b)(8) and 383.141; and

(8) Make the CDL valid for no more than 8 years from the date of issuance.

(c) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State must:

(1) Require the driver applicant to make the certifications contained in § 383.71(b);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section; and

(6) Require the applicant to surrender the CDL issued by the applicant's previous State of domicile.

(7) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is only required to check the proof of citizenship or immigration status specified in this paragraph for initial issuance of a CLP or Nonresident CDL, transfer of CDL from another State or for drivers renewing a CDL or Nonresident CDL for the first time after [*effective date of final rule*], provided a notation is made on the driver's record confirming that the proof of citizenship or immigration status check required by this paragraph has been made and noting the date it was done.

(d) *License Renewals.* Prior to renewing any CDL a State must:

(1) Require the driver applicant to make the certifications contained in § 383.71(b);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in § 383.121 and comply with the standards specified in §§ 383.71(b)(8) and 383.141 for such endorsement;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section; and

(6) Make the renewal of the CDL valid for no more than 8 years from the date of issuance.

(7) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10).

(e) *License upgrades.* Prior to issuing an upgrade of a CDL, a State must:

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in § 383.71(e);

(2) Complete a check of the driver applicant's record as described in paragraph (b)(3) of this section;

(3) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section; and

(4) Require the driver applicant to surrender his/her previous CDL.

(5) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10).

(f) *Nonresident CDL.* (1) A State may only issue a Nonresident CDL to a person who meets one of the circumstances described in § 383.71(f)(1).

(2) State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS must at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(i) If the applicant is requesting a transfer of his/her Nonresident CDL, the State must obtain the Nonresident CDL currently held by the applicant and issued by another State;

(ii) The State must add the word ''Nonresident'' to the face of the CDL, in accordance with § 383.153(b); and

(iii) The State must have established, prior to issuing any Nonresident CDL, the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a person domiciled in the State.

(3) The State must require compliance with the standards for providing proof of immigration status specified in § 383.71(b)(9) and § 383.71(f)(2)(i).

(g) *Social Security Number verification.* (1) Prior to issuing a CLP or a CDL to a person the State must verify the name, date of birth, and Social Security Number provided by the applicant with the information on file with the Social Security Administration. The State is prohibited from issuing, renewing, upgrading, or transferring a CLP or CDL if the Social Security Administration database does not match the applicant-provided data.

(2) *Exception:* A State is only required to perform the Social Security Number verification specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after *[effective date of final rulemaking]* who have not previously had their Social Security Number information verified, provided a notation is made on the driver's record confirming that the verification required by this paragraph has been made and noting the date it was done.

(h) *License issuance.* After the State has completed the procedures described in paragraphs (a) through (g) of this section, it may issue a CLP or CDL to the driver applicant. The State must:

(1) Mail the initial CLP or CDL to the address provided on the application form; and

(2) Notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(i) *Surrender procedure.* A State may return a surrendered license to a driver after physically marking it so that it cannot be mistaken for a valid document. Simply punching a hole in the expiration date of the document is insufficient. A document perforated with the word ''VOID'' is considered invalidated.

(j) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CLP or CDL, or at any time after the CLP or CDL is issued, that the applicant has falsified information contained in subpart J of this part or any of the certifications required in § 383.71(b), the State must at a minimum suspend, cancel, or revoke the person's CLP or CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

(k) *Drivers convicted of fraud related to the testing and issuance of a CLP or CDL.* (1) The State must have policies in effect which result, at a minimum, in the cancellation or revocation of the CLP or CDL of a person who has been convicted of fraud related to the issuance of that CLP or CDL. The application of a person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained CLP or CDL must also, at a minimum, be canceled or revoked. The State must record any such withdrawal in the person's driving record. The person may not reapply for a new CDL for at least 1 year.

(2) If a State receives credible information that a CLP- or CDL-holder is suspected, but has not been convicted, of fraud related to the issuance of his or her CLP or CDL, the State must require the driver to be re-tested within 30 days both for knowledge and skills. The driver's CLP or CDL must be withdrawn after 30 days pending the results of re-testing.

(l) *Reciprocity.* A State must allow any person who has a valid CLP, CDL, Nonresident CLP, or Nonresident CDL and who is not disqualified from operating a CMV, to operate a CMV in the State.

(m) *Document verification.* The State must require at least two persons within the driver licensing agency to check and verify all documents involved in the licensing process for the initial issuance, renewal, upgrade, or transfer of a CLP or CDL. The documents being checked and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores.

(n) *Computer system controls.* The State must establish computer system controls that would:

(1) Prevent the issuance of an initial, renewed, upgraded, or transferred CLP or CDL when the results of transactions indicate the applicant is unqualified. These controls, at a minimum, must be established for the following transactions: State, CDLIS, and PDPS driver record checks; Social Security Number verification; and knowledge and skills test scores verification.

(2) Ensure that only supervisory level personnel may continue the issuance process whenever State, CDLIS, and/or PDPS driver record checks return suspect results. The supervisor must ensure these results are not connected to

a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation). In addition, both the name of the person authorizing the issuance and the justification for the authorization must be documented by the State.

11. Revise § 383.75 to read as follows:

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a third-party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part;

(2) The State must conduct an on-site inspection of each third party test site at least annually, with focus on examiners with unusually high or low pass or fail rates;

(3) The State must issue the third party tester a CDL skills testing certificate upon the execution of a third party skills testing agreement.

(4) The State must issue each third party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed by the State;

(5) The State must, at least on an annual basis, do one of the following for each third party examiner:

(i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results;

(6) The State must take prompt and appropriate remedial action against a third-party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract; and

(7) The State has an agreement with the third party containing, at a minimum, provisions that:

(i) Allow the FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third party examiners meet the qualification and training standards of § 384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third party;

(iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third-party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract;

(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

(vi) Require the third party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;

(vii) Require the third party tester to use designated road test routes that have been approved by the State;

(viii) Require the third party tester to submit a weekly schedule of CDL skills testing appointments to the State no later than the last business day of the prior week; and

(ix) Require the third party tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third party examiner's State certificate authorizing the third party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third party agreement;

(D) A copy of each completed CDL skills test scoring sheet for the current year and the past two calendar years;

(E) A copy of the third party tester's State-approved road test route(s); and

(F) A copy of each third party examiner's training record.

(b) *Proof of testing by a third party.* The third party tester must notify the State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third party tester.

(c) *Minimum number of tests conducted.* (1) The State must cancel the third party agreement of any third party tester that does not conduct at least 50 skills test examinations per calendar year.

(2) The State must revoke the skills testing certification of any examiner who does not conduct at least 10 skills test examinations per calendar year.

§ 383.77 [Removed]

12. Remove § 383.77.

13. Add new § 383.79 to read as follows:

§ 383.79 Skills testing of out-of-State students.

(a) A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another United States jurisdiction (i.e., his/her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in an efficient and secure manner.

(b) The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73.

14. Amend § 383.93 by revising paragraph (a) to read as follows:

§ 383.93 Endorsements.

(a) *General.* (1) In addition to passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section must pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(2) The only endorsement allowed on a CLP is a Passenger endorsement.

(3) The State must use the codes listed in § 383.153 when placing endorsements on a CLP or CDL.

* * * * *

15. Revise § 383.95 to read as follows:

§ 383.95 Restrictions.

(a) *Air brake.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the

CLP or CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test and the restriction, air brakes include any braking system operating fully or partially on the air brake principle.

(b) *Full air brake.* (1) If an applicant performs the skills test in a vehicle equipped with air over hydraulic brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with any braking system operating fully on the air brake principle.

(2) For the purposes of the skills test and the restriction, air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.

(c) *Manual transmission.* (1) If an applicant performs the skills test in a vehicle equipped with an automatic transmission, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with a manual transmission.

(2) For the purposes of the skills test and the restriction, an automatic transmission includes any transmission not operating fully on the gear shift and clutch principle.

(d) *Tractor-trailer.* If an applicant performs the skills test in a combination vehicle for a Group A CDL with the power unit and towed unit connected with a pintle hook or other non-fifth wheel connection, the State must indicate on the CDL, if issued, that the person is restricted from operating a tractor-trailer combination connected by a fifth wheel that requires a Group A CDL.

(e) *Group A passenger vehicle.* If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group B CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A CDL.

(f) *Group A and B passenger vehicle.* If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group C CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A or B CDL.

(g) *CLP Passenger Vehicle.* If an applicant is applying for a passenger endorsement on a CLP, the State must indicate on the CLP, if issued, that the person is restricted from operating a passenger vehicle carrying passengers, except for the CDL holder who is required to accompany the CLP holder.

16. Revise § 383.110 to read as follows:

§ 383.110 General requirement.

All drivers of commercial motor vehicles (CMVs) must have knowledge and skills necessary to operate a CMV safely as contained in this subpart. The specific types of items, which a State must include in the knowledge and skills tests that it administers to CDL applicants, are included in this subpart.

17. Revise § 383.111 to read as follows:

§ 383.111 Required knowledge.

(a) All CMV operators must have knowledge of the following 20 general areas:

(1) *Safe operations regulations.* Driver-related elements of the regulations contained in parts 391, 392, 393, 395, 396, and 397 of this subchapter, such as:

(i) Motor vehicle inspection, repair, and maintenance requirements;

(ii) Procedures for safe vehicle operations;

(iii) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation;

(iv) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this subchapter; and

(v) The effects of alcohol and drug use upon safe commercial motor vehicle operations.

(2) *CMV safety control systems.* (i) Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions.

(ii) CMV drivers must have knowledge of the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(3) *Safe vehicle control systems.* The purpose and function of the controls and instruments commonly found on CMVs.

(4) *Basic control.* The proper procedures for performing various basic maneuvers, including:

(i) Starting, warming up, and shutting down the engine;

(ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and

(iv) Turning the vehicle, e.g., basic rules, off tracking, right/left turns and right curves.

(5) *Shifting.* The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions, including:

(i) Key elements of shifting, e.g., controls, when to shift, and double clutching;

(ii) Shift patterns and procedures; and

(iii) Consequences of improper shifting.

(6) *Backing.* The procedures and rules for various backing maneuvers, including:

(i) Backing principles and rules; and

(ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(7) *Visual search.* The importance of proper visual search, and proper visual search methods, including:

(i) Seeing ahead and to the sides;

(ii) Use of mirrors; and

(iii) Seeing to the rear.

(8) *Communication.* The principles and procedures for proper communications and the hazards of failure to signal properly, including:

(i) Signaling intent, e.g., signaling when changing direction in traffic;

(ii) Communicating presence, e.g., using horn or lights to signal presence; and

(iii) Misuse of communications.

(9) *Speed management.* The importance of understanding the effects of speed, including:

(i) Speed and stopping distance;

(ii) Speed and surface conditions;

(iii) Speed and the shape of the road;

(iv) Speed and visibility; and

(v) Speed and traffic flow.

(10) *Space management.* The procedures and techniques for controlling the space around the vehicle, including:

(i) The importance of space management;

(ii) Space cushions, e.g., controlling space ahead/to the rear;

(iii) Space to the sides; and

(iv) Space for traffic gaps.

(11) *Night operation.* Preparations and procedures for night driving, including:

(i) Night driving factors, e.g., driver factors (vision, glare, fatigue, inexperience);

(ii) Roadway factors (low illumination, variation in illumination, unfamiliarity with roads, other road users, especially drivers exhibiting erratic or improper driving); and

(iii) Vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors).

(12) *Extreme driving conditions.* The basic information on operating in extreme driving conditions and the hazards encountered in such conditions, including:

(i) Bad weather, e.g., snow, ice, sleet, high wind;

(ii) Hot weather; and
(iii) Mountain driving.
(13) *Hazard perceptions.* The basic information on hazard perception and clues for recognition of hazards, including:
(i) Road characteristics; and
(ii) Road user activities.
(14) *Emergency maneuvers.* The basic information concerning when and how to make emergency maneuvers, including:
(i) Evasive steering;
(ii) Emergency stop;
(iii) Off road recovery;
(iv) Brake failure; and
(v) Blowouts.
(15) *Skid control and recovery.* The information on the causes and major types of skids, as well as the procedures for recovering from skids.
(16) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo, including:
(i) Consequences of improperly secured cargo, drivers' responsibilities, and Federal/State and local regulations;
(ii) Principles of weight distribution; and
(iii) Principles and methods of cargo securement.
(17) Vehicle inspections. The objectives and proper procedures for performing vehicle safety inspections, as follows:
(i) The importance of periodic inspection and repair to vehicle safety.
(ii) The effect of undiscovered malfunctions upon safety.
(iii) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.
(iv) Pre-trip/en route/post-trip inspection procedures.
(v) Reporting findings.
(18) *Hazardous materials.* Knowledge of the following:
(i) What constitutes hazardous material requiring an endorsement to transport;
(ii) Classes of hazardous materials;
(iii) Labeling/placarding requirements; and
(iv) Need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.
(19) *Mountain driving.* Practices that are important when driving upgrade and downgrade, including:
(i) Selecting a safe speed;
(ii) Selecting the right gear; and
(iii) Proper braking techniques.
(20) *Fatigue and awareness.* Practices that are important to staying alert and safe while driving, including;
(i) Being prepared to drive;
(ii) What to do when driving;
(iii) What to do when sleepy while driving; and
(iv) Becoming ill while driving.
(b) *Air brakes.* All CMV drivers operating vehicles equipped with air brakes must have knowledge of the following 7 areas:
(1) General air brake system nomenclature;
(2) The dangers of contaminated air supply (dirt, moisture, and oil);
(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);
(4) Implications of low air pressure readings;
(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:
(i) Automatic fail-safe devices;
(ii) System monitoring devices; and
(iii) Low pressure warning alarms.
(6) Procedures for conducting en route and post-trip inspections of air actuated brake systems, including:
(i) Ability to detect defects which may cause the system to fail;
(ii) Tests that indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and
(iii) Tests that indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.
(7) General operating practices and procedures, including:
(i) Proper braking techniques;
(ii) Antilock brakes;
(iii) Emergency stops; and
(iv) Parking brake.
(c) *Combination vehicles.* All CMV drivers operating combination vehicles must have knowledge of the following 3 areas:
(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to a semi-trailer;
(2) Vehicle inspection—The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles; and
(3) General operating practices and procedures, including:
(i) Safely operating combination vehicles; and
(ii) Air brakes.
18. Revise § 383.113 to read as follows:

§ 383.113 Required skills.

(a) *Pre-trip vehicle inspection skills.* Applicants for a CDL must possess the following basic pre-trip vehicle inspection skills for the vehicle class that the driver operates or expects to operate:
(1) *All test vehicles.* Applicants must be able to identify each safety-related part on the vehicle and explain what needs to be inspected to make sure the part is in a safe condition, including:
(i) Engine compartment;
(ii) Cab/engine start;
(iii) Steering;
(iv) Suspension;
(v) Brakes;
(vi) Wheels;
(vii) Side of vehicle;
(viii) Rear of vehicle; and
(ix) Special features of tractor trailer, school bus, or coach/transit bus, if this type of vehicle is being used for the test.
(2) *Air brake equipped test vehicles.* Applicants must demonstrate the following skills with respect to inspection and operation of air brakes:
(i) Locate and verbally identify air brake operating controls and monitoring devices;
(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;
(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;
(iv) With the engine running, make sure that the system maintains an adequate supply of compressed air;
(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and
(vi) Operationally check the brake system for proper performance.
(b) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for the vehicle class that the driver operates or expects to operate:
(1) Ability to start, warm up, and shut down the engine;
(2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;
(3) Ability to bring the motor vehicle to a smooth stop;
(4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;
(5) Ability to position the motor vehicle to negotiate and then make left and right turns;
(6) Ability to shift as required and select appropriate gear for speed and highway conditions; and
(7) Ability to back along a curved path.

(c) *Safe on-road driving skills.* All applicants for a CDL must possess and demonstrate the following safe on-road driving skills for their vehicle class:

(1) Ability to use proper visual search methods;

(2) Ability to signal appropriately when changing direction in traffic;

(3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicles, cargo and driver conditions;

(4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;

(5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;

(6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight;

(7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes, and following distance to maintain control; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

19. Revise § 383.115 to read as follows:

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a double/triple trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, and yaw stability in steady turns;

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement; and

(e) Operating practices and procedures not otherwise specified.

20. Revise § 383.117 to read as follows:

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad-highway grade crossings and drawbridges;

(5) Proper braking procedures; and

(6) Operating practices and procedures not otherwise specified.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle class, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that vehicle group as defined in § 383.91.

21. Revise § 383.119 to read as follows:

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a tank vehicle endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full, and partially full;

(c) Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled, and empty tanks;

(g) Proper use of emergency systems;

(h) For drivers of DOT specification tank vehicles, retest and marking requirements; and

(i) Operating practices and procedures not otherwise specified.

22. Revise § 383.121 to read as follows:

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a hazardous material endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

(1) Hazardous materials table;

(2) Shipping paper requirements;

(3) Marking;

(4) Labeling;

(5) Placarding requirements;

(6) Hazardous materials packaging;

(7) Hazardous materials definitions and preparation;

(8) Other regulated material (e.g., ORM–D);

(9) Reporting hazardous materials accidents; and

(10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

(1) Forbidden materials and packages;

(2) Loading and unloading materials;

(3) Cargo segregation;

(4) Passenger carrying buses and hazardous materials;

(5) Attendance of motor vehicles;

(6) Parking;

(7) Routes;

(8) Cargo tanks; and

(9) ''Safe havens.''

(c) Operation of emergency equipment including:

(1) Use of equipment to protect the public;

(2) Special precautions for equipment to be used in fires;

(3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

(4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

(1) Special care and precautions for different types of accidents;

(2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

(3) Emergency procedures; and

(4) Existence of special requirements for transporting Class A and B explosives.

(e) Operating practices and procedures not otherwise specified.

23. Revise § 383.123 to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for the school bus endorsement must satisfy the following three requirements:

(1) *Qualify for passenger vehicle endorsement.* Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) *Knowledge test.* Must have knowledge covering the following topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing railroad-highway grade crossings; and

(iv) Operating practices and procedures not otherwise specified.

(3) *Skills test.* Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(b) *Exception.* Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (a)(3) of this section.

Appendix to Subpart G [Removed]

24. Remove the appendix to subpart G of part 383.

25. Revise § 383.131 to read as follows:

§ 383.131 Test manuals.

(a) *Driver information manual.* (1) A State must provide to a CLP or CDL applicant a copy of the driver information manual that conforms to the requirements in the December 2005 edition of the American Association of Motor Vehicle Administrators' (AAMVA's) ''Model Commercial Driver Manual'' (Incorporated by reference, see § 383.9). These requirements include:

(i) Information on how to obtain a CDL and endorsements;

(ii) Information on the requirements described in § 383.71, the implied consent to alcohol testing described in § 383.72, the procedures and penalties, contained in § 383.51(b) to which a CLP or CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(iii) Information on vehicle groups and endorsements as specified in subpart F of this part;

(iv) The substance of the knowledge and skills which drivers must have as outlined in subpart G of this part for the different vehicle groups and endorsements; and

(v) Details of testing procedures, including the purpose of the tests, how to respond, and directions for taking the tests.

(2) A State may include any additional State-specific information related to the CDL testing and licensing process.

(b) *Examiner information manual.* (1) A State must provide to all knowledge and skills test examiners a copy of the examiner information manual that conforms to the requirements in the December 2005 edition of AAMVA's ''Model CDL Examiner's Manual'' (Incorporated by reference, see § 383.9). These requirements include:

(i) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(ii) Details on information which must be given to the applicant;

(iii) Details on how to conduct the knowledge and skills tests;

(iv) Scoring procedures and minimum passing scores for the knowledge and skills tests;

(v) Information for selecting driving test routes for the skills tests;

(vi) List of the skills to be tested;

(vii) Instructions on where and how the skills will be tested;

(viii) How performance of the skills will be scored;

(ix) Causes for automatic failure of skills tests;

(x) Standardized scoring sheets for the skills tests; and

(xi) Standardized driving instructions for the applicants.

(2) A State may include any additional State-specific information related to the CDL testing process.

(c) *State recordkeeping.* States must record and retain the knowledge and skills test scores of tests taken by driver applicants. The test scores must either be made part of the driver history record or be linked to the driver history record in a separate file.

26. Revise § 383.133 to read as follows:

§ 383.133 Test methods.

(a) All tests must be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) *Knowledge tests:* (1) States must use the pool of test questions that conform to the requirements in the December 2005 edition of AAMVA's ''2005 Test Item Summary Forms'' (Incorporated by reference, see § 383.9) to develop knowledge tests for each vehicle group and endorsement.

(2) Each version of the knowledge test must conform to the requirements in the December 2005 edition of AAMVA's ''2005 Requirements Document For Use In Developing Computer-Generated Multiple-Choice CDL Knowledge Tests'' (Incorporated by reference, see § 383.9). These requirements include:

(i) The total difficulty level of the questions used in each version of a test must fall within a set range;

(ii) Twenty-five percent of the questions on a test must be new questions that were not contained in the previous version of the test;

(iii) Identical questions from the previous version of the test must be in a different location on the test and the three possible responses to the questions must be in a different order; and

(iv) Each test must contain a set number of questions with a prescribed number of questions from each of the knowledge areas.

(3) Each knowledge test must be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111. The knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test.

(4) A State must use a different version of the test when an applicant retakes a previously failed test.

(c) *Skills tests:* (1) A State must develop, administer and score the skills tests based solely on the information and standards contained in the driver and examiner manuals referred to in § 383.131(a) and (b).

(2) A State must use the standardized scores and instructions for administering the tests contained in the examiner manual referred to in § 383.131(b).

(3) An applicant must complete the skills tests in a representative vehicle to ensure that the applicant possess the skills required under § 383.113. In determining whether the vehicle is a representative vehicle for the skills test and the group of CDL the applicant is applying for, the vehicle's gross vehicle weight rating or gross combination weight rating must be used, not the vehicle's actual gross vehicle weight or gross combination weight.

(4) Skills tests must be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(5) Interpreters are prohibited during the administration of skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner.

(6) The pre-trip inspection and the basic vehicle control tests must be administered prior to the on-road portion of the skills test. If an applicant fails one of these tests, the applicant can not continue to the next skills test. An applicant who has failed a skills test must retake all three tests.

(d) A State may utilize simulators to perform skills testing, except that simulator testing may not be substituted for the required testing in on-street conditions.

(e) Passing scores for the knowledge and skills tests must meet those standards contained in § 383.135.

27. Revise § 383.135 to read as follows:

§ 383.135 Passing knowledge and skills tests.

(a) *Knowledge tests.* (1) To achieve a passing score on each of the knowledge tests, a driver applicant must correctly answer at least 80 percent of the questions.

(2) If a driver applicant who fails the air brake knowledge test (scores less than 80 percent correct) is issued a CLP or CDL, an air brake restriction must be indicated on the license as required in § 383.95(a).

(3) A driver applicant who fails the combination vehicle knowledge test (scores less than 80 percent correct) must not be issued a Group A CLP or CDL.

(b) *Skills Tests.* (1) To achieve a passing score on each of the three skills tests, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113 and attain the scores listed in Appendix A of the examiner manual referred to in § 383.131(b) for the type of vehicle being used in the test.

(2) A driver applicant who does not obey traffic laws, causes an accident during the test, or commits any other offense listed as an automatic failure in AAMVA's ''2005 CDL Test System'' must automatically fail the test.

(3) If a driver applicant who performs the skills test in a vehicle not equipped with any type of air brake system is issued a CDL, an air brake restriction must be indicated on the license as required in § 383.95(a).

(4) If a driver applicant who performs the skills test in a vehicle equipped with air over hydraulic brakes is issued a CDL, a full air brake restriction must be indicated on the license as required in § 383.95(b).

(5) If a driver applicant who performs the skills test in a vehicle equipped with an automatic transmission is issued a CDL, a manual transmission restriction must be indicated on the license as required in § 383.95(c).

(6) If a driver applicant who performs the skills test in a combination vehicle requiring a Group A CDL equipped with any non-fifth wheel connection is issued a CDL, a tractor-trailer restriction must be indicated on the license as required in § 383.95(d).

(7) If a driver applicant wants to remove any of the restrictions in paragraphs (b)(3) through (b)(5) of this section, the applicant does not have to retake the complete set of skills tests. The State may administer a modified set of skills tests that demonstrates that the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, and/or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must also successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.

(8) If a driver applicant wants to remove the tractor-trailer restriction in paragraph (b)(6) of this section, the applicant must retake all three skills tests in a representative tractor-trailer.

Subpart J—[Amended]

28. Revise the heading for subpart J to read as follows:

Subpart J—Commercial Learner's Permit and Commercial Driver's License Documents

29. Revise § 383.151 to read as follows:

§ 383.151 General.

(a) The CDL must be a document that is easy to recognize as a CDL.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) At a minimum, the CDL and the CLP must contain the information specified in § 383.153.

30. Revise § 383.153 to read as follows:

§ 383.153 Information on the CLP and CDL documents and applications.

(a) Commercial Driver's License. All CDLs must contain all of the following information:

(1) The prominent statement that the license is a ''Commercial Driver's License'' or ''CDL,'' except as specified in paragraph (c) of this section.

(2) The full name, signature, and mailing or residential address in the licensing State of the person to whom such license is issued.

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(4) Color photograph or digitized color image of the driver. The State may issue a temporary CDL without a photo or image, if it is valid for no more than 60 days.

(5) The driver's State license number.

(6) The name of the State which issued the license.

(7) The date of issuance and the date of expiration of the license.

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(i) T for double/triple trailers;

(ii) P for passenger;

(iii) N for tank vehicle;

(iv) H for hazardous materials;

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(10) The restriction(s) placed on the driver from operating certain equipment or vehicles, if any, indicated as follows:

(i) L for Air brake.

(ii) Z for Full air brake.

(iii) E for Manual transmission.

(iv) O for Tractor-trailer.

(v) M for Group A passenger vehicle.

(vi) N for Group A and B passenger vehicle.

(vii) K for Intrastate only.

(viii) Y for a driver who operates or expects to operate in interstate commerce, but is not subject to part 391 of this subchapter due to an exception under § 390.3(f) of this subchapter or an exemption under § 391.2.

(ix) At the discretion of the State, additional codes for additional restrictions, as long as each such restriction code is fully explained on the front or back of the CDL document.

(b) Commercial Learner's Permit. All CLPs must contain all of the following information:

(1) The prominent statement that the permit is a ''Commercial Learner's Permit'' or ''CLP,'' except as specified in paragraph (c) of this section, and that it is invalid unless accompanied by the

underlying driver's license issued by the same jurisdiction.

(2) The full name, signature, and mailing or residential address in the permitting State of the person to whom the permit is issued.

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(4) Color photograph or digitized color image of the driver.

(5) The driver's State license number.

(6) The name of the State which issued the permit.

(7) The date of issuance and the date of expiration of the permit.

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The P (for passenger) endorsement, if the driver has qualified for that endorsement.

(10) The P restriction placed on the driver from carrying passengers, if the driver has qualified for the passenger (P) endorsement.

(11) Any additional jurisdictional restrictions that apply to the CLP driving privilege.

(c) If the CLP or CDL is a Nonresident CLP or CDL, it must contain the prominent statement that the license or permit is a ''Nonresident Commercial Driver's License,'' ''Nonresident CDL,'' ''Nonresident Commercial Learner's Permit,'' or ''Nonresident CLP,'' as appropriate. The word ''Nonresident'' must be conspicuously and unmistakably displayed, but may be noncontiguous with the words ''Commercial Driver's License,'' ''CDL,'' ''Commercial Learner's Permit,'' or ''CLP.''

(d) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the CLP or CDL.

(e) Except in the case of a Nonresident CLP or CDL holder who is domiciled in a foreign jurisdiction:

(1) A driver applicant must provide his/her Social Security Number on the application of a CLP or CDL.

(2) The State must provide the Social Security Number to the CDLIS.

(3) The State is not required to include the Social Security Number on the CLP or CDL.

(f) The State may issue a multipart CDL provided—

(1) Each document is explicitly tied to the other document(s) and to a single driver's record.

(2) The multipart license document includes all of the data elements specified in this section.

(g) CLP Passenger Vehicle. If an applicant is applying for a passenger endorsement on a CLP, the State must indicate on the CLP, if issued, that the person is restricted from operating a passenger vehicle carrying passengers, except for the CDL holder who is required to accompany the CLP holder.

31. Revise § 383.155 to read as follows:

§ 383.155 Tamperproofing requirements.

States must make the CLP or CDL tamperproof to the maximum extent practicable. At a minimum, a State must use the same tamperproof method used for noncommercial drivers' licenses.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

32. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; sec. 103 of Pub. L. 106–159, 113 Stat. 1753, 1767; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

33. Amend § 384.105(b) by revising the definition of *issue and issuance* to read as follows:

* * * * *

§ 384.105 Definitions.

* * * * *

(b) * * *

Issue and *issuance* mean initial issuance, transfer, renewal, or upgrade of a CLP or CDL and Nonresident CLP or CDL, as described in § 383.73 of this subchapter.

* * * * *

34. Revise § 384.204 to read as follows:

§ 384.204 CLP or CDL issuance and information.

(a) *General rule.* The State shall authorize a person to operate a CMV only by issuance of a CLP or CDL, unless an exception in § 383.3(c) or (d) applies, which contains, at a minimum, the information specified in part 383, subpart J, of this subchapter.

(b) *Exceptions*—(1) *Training.* The State may authorize a person, who does not hold a CDL valid for the type of vehicle in which training occurs, to undergo behind-the-wheel training in a CMV only by means of a CLP issued and used in accordance with § 383.25 of this subchapter.

(2) *Confiscation of CLP or CDL pending enforcement.* A State may allow a CLP or CDL holder whose CLP or CDL is held in trust by that State or any other State in the course of enforcement of the motor vehicle traffic code, but who has not been convicted of a disqualifying offense under § 383.51 of this subchapter based on such enforcement, to drive a CMV while holding a dated receipt for such CLP or CDL.

35. Revise § 384.205 to read as follows:

§ 384.205 CDLIS information.

Before issuing a CLP or a CDL to any person, the State must, within the period of time specified in § 384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with § 383.73(b)(3)(ii) of this subchapter, and, based on that information, shall issue the license, or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

36. Revise § 384.206 to read as follows:

§ 384.206 State record checks.

(a) *Issuing State's records.* (1) Before issuing a CLP or CDL to any person, the State must, within the period of time specified in § 384.232, check its own driving record for such person in accordance with § 383.73(b)(3) of this subchapter.

(2) Based on the findings of its own State record check, the State shall issue the license, or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

(b) *Other States' records.* (1) Before the initial or transfer issuance of a CLP or CDL to a person, and before renewing or upgrading a CLP or CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle during the previous 10 years.

(ii) Within the time period specified in § 384.232, request the complete driving record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(2) States receiving a request for the driving record of a person currently or previously licensed by the State must provide the information within 30 days.

(3) Based on the findings of the other State record checks, the issuing State must, in the case of adverse information, promptly implement the

disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

37. Amend § 384.207 by revising the introductory text and paragraph (a) to read as follows:

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(h) of this subchapter, the State must:

(a) Notify the operator of the CDLIS of each CLP or CDL issuance;

* * * * *

38. Amend § 384.208 by revising paragraph (a) to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State, or revoking, suspending, or canceling an out-of-State CLP or CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification, revocation, suspension, or cancellation.

* * * * *

39. Amend § 384.209 by revising paragraph (a) to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CLP or CDL holders.* Whenever a person who holds a CLP or CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

* * * * *

40. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CLP, a CDL, or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined in § 383.5 of this subchapter, or under the provisions of § 383.73(j) or § 384.231(b)(2) of this subchapter;

(b) The CLP or CDL holder's noncommercial driving privilege has been revoked, suspended, or canceled; or

(c) Any type of driver's license held by such person is suspended, revoked, or canceled by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking violations).

41. Revise § 384.211 to read as follows:

§ 384.211 Surrender of old licenses.

The State may not initially issue, upgrade, or transfer a CDL to a person unless such person first surrenders any previously issued driver's license and CLP.

42. Revise § 384.212 to read as follows:

§ 384.212 Domicile requirement.

(a) The State may issue CDLs or CLPs only to those persons for whom such State is the State of domicile as defined in § 383.5 of this subchapter; except that the State may issue a nonresident CLP or CDL under the conditions specified in §§ 383.23(b), 383.71(f), and 383.73(f) of this subchapter.

(b) The State must require any person holding a CLP or CDL issued by another State to apply for a transfer CLP or CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(c) of this subchapter.

43. Revise § 384.214 to read as follows:

§ 384.214 Reciprocity.

The State must allow any person to operate a CMV in the State who is not disqualified from operating a CMV and who holds a CLP or CDL that is—

(a) Issued to him or her by his or her State or jurisdiction of domicile in accordance with part 383 of this subchapter;

(b) Not suspended, revoked, or canceled; and

(c) Valid, under the terms of part 383, subpart F, of this subchapter, for the type of vehicle being driven.

44. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life any person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction of a first offense of using a CMV (or, in the case of a CDL holder, a non-CMV) in the commission of a felony described in item (9) of Table 1 to § 383.51 of this subchapter. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to § 383.51 of this subchapter.

45. Revise § 384.220 to read as follows:

§ 384.220 Problem Driver Pointer System information.

Before issuing a CLP or CDL to any person, the State must, within the period of time specified in § 384.232, perform the check of the Problem Driver Pointer System in accordance with § 383.73(b)(3)(iii) of this subchapter, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

46. Amend § 384.225 by revising paragraphs (a) and (b) to read as follows:

§ 384.225 Record of violations.

* * * * *

(a) *CLP or CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) *A person required to have a CLP or CDL.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

* * * * *

47. Revise § 384.226 to read as follows:

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

48. Add § 384.227 to read as follows:

§ 384.227 Record of digital color image or photograph.

The State must:

(a) Record the digital color image or photograph that is captured as part of the application process and placed on the licensing document of every person who is issued a CLP or CDL, as required under § 383.153. The digital color image or photograph must either be made part of the driver history or be linked to the driver history in a separate file.

(b) Check the digital color image or photograph on record whenever the CLP or CDL is renewed, upgraded, or transferred and when a duplicate CLP or CDL is issued.

49. Add § 384.228 to read as follows:

§ 384.228 Examiner training and record checks.

For all State and third party CDL test examiners, the State must meet the following 8 requirements:

(a) Establish examiner training standards for initial and refresher training that provides CDL test examiners with a fundamental understanding of the objectives of the CDL testing program, and with all of the knowledge and skills necessary to serve as a CDL test examiner and assist jurisdictions in meeting the Federal CDL testing requirements.

(b) Require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests. The training course must cover at least the following six units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.

(ii) Drivers covered by CDL program.

(iii) CDL vehicle classification.

(iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

(i) CDL test, classifications, and endorsements.

(ii) Different examinations.

(iii) Representative vehicles.

(iv) Validity and reliability.

(v) Test maintenance.

(3) Knowledge tests:

(i) General knowledge tests.

(ii) Specialized knowledge tests.

(iii) Selecting the appropriate tests and test forms.

(iv) Knowledge test administration.

(4) Vehicle inspection test:

(i) Test overview.

(ii) Description of safety rules.

(iii) Test scoring procedures.

(iv) Scoring standards.

(v) Calculating final score.

(5) Basic control skills testing:

(i) Setting up the basic control skills course.

(ii) Description of safety rules.

(iii) General scoring procedures.

(iv) Administering the test.

(v) Calculating the score.

(6) Road test:

(i) Setting up the road test.

(ii) Required maneuvers.

(iii) Administering the road test.

(iv) Calculating the score.

(c) Require all third party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests. The training course must cover at least the six units of instruction in paragraph (b) of this section.

(d) Require State and third party CDL test examiners to successfully complete a refresher training course and examination every four years to maintain their CDL test examiner certification. The refresher training course must cover at least the following:

(1) The six units of training described in paragraph (b) of this section.

(2) Any State specific material and information related to administering CDL knowledge and skills tests.

(3) Any new Federal CDL regulations, updates to administering the tests, and new safety related equipment on the vehicles.

(e) Complete criminal background checks of all skills test examiners prior to certifying them to administer CDL skills tests.

(f) Complete an annual criminal background check of all test examiners.

(g) Maintain a record of the results of criminal background checks and CDL examiner test training and certification of all CDL test examiners.

(h) Rescind the certification to administer CDL tests of all test examiners who:

(1) Do not successfully complete the required annual refresher training; or

(2) Do not pass annual criminal background checks. Criteria for not passing the criminal background check must include at least the following:

(i) Any felony conviction within the last 10 years; or

(ii) Any conviction involving fraudulent activities.

(*i*) The six units of training described in paragraph (b) of this section may be supplemented with State specific material and information related to administering CDL knowledge and skills tests.

50. Add § 384.229 to read as follows:

§ 384.229 Skills test examiner auditing and monitoring.

To ensure the integrity of the CDL skills testing program, the State must:

(a) At least annually, conduct unannounced on-site inspections of third party testers' and examiners' records, including comparison of the CDL skills test results of CDL applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third party testers' files;

(b) At least annually, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners;

(c) Establish and maintain a database to track pass/fail rates of applicants tested by each State and third party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(d) Establish and maintain a database of all third party testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third party testers were certified by the State, and name and identification number each third party CDL skills test examiner;

(e) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and

(f) Establish and maintain a database that tracks skills tests administered by each State and third party CDL skills test examiner's name and identification number.

51. Amend § 384.231 by revising paragraph (b) to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

* * * * *

(b) *Required action*—(1) *CLP or CDL holders.* A State must satisfy the requirement of this subpart that the State disqualify a person who holds a CLP or a CDL by, at a minimum, suspending, revoking, or canceling the person's CLP or CDL for the applicable period of disqualification.

(2) *A person required to have a CLP or CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CLP or CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CLP or CDL from any State during the applicable disqualification period(s) specified in this subpart.

* * * * *

52. Amend § 384.301 by revising paragraph (c) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(c) A State must come into substantial compliance with the requirements of

subpart B of this part in effect as of [effective date of final rule] as soon as practical but, unless otherwise specifically provided in this part, not later than [3 years after effective date of final rule].

53. Revise § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CLP or CDL transactions.* The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following CLP or CDL transactions:

(1) Initial issuance.

(2) Renewal.

(3) Transfer.

(4) Upgrade.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Registry Problem Driver Pointer System (PDPS) as required by § 383.73 of this subchapter when issuing, renewing, transferring, or upgrading a CLP or CDL.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out of State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CLP or CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed upon time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CLP and CDL applicants or drivers.

(d) *Decertification: preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in paragraph (b) of this section, among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: final determination.* If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists which warrants decertification of the CDL program, he or she will issue a decertification order prohibiting the State from issuing CLPs and CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his or her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CLPs and CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) *Validity of previously issued CLPs or CDLs.* A CLP or CDL issued by a State prior to the date the State is prohibited from issuing CLPs or CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

PART 385—SAFETY FITNESS PROCEDURES

54. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

55. Amend appendix B to part 385, section VII, List of Acute and Critical Regulations, by redesignating the entries for §§ 383.37(a) and 383.37(b) as §§ 383.37(b) and 383.37(c) and adding a new entry for § 383.37(a) to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. LIST OF ACUTE AND CRITICAL REGULATIONS

* * * * *

§ 383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV (acute).

* * * * *

Issued on: March 31, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–7070 Filed 4–8–08; 8:45 am]

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Federal Register

Wednesday,
April 9, 2008

Part III

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations: Drinking Water Regulations for Aircraft Public Water Systems; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2005–0025; FRL–8551–3]

RIN 2040–AE84

National Primary Drinking Water Regulations: Drinking Water Regulations for Aircraft Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to amend and consolidate in one place the federal drinking water requirements (known as National Primary Drinking Water Regulations or NPDWRs) for aircraft public water systems under the Safe Drinking Water Act (SDWA). Aircraft public water systems are subject to the requirements of SDWA and the NPDWRs. The existing federal drinking water standards were primarily designed to regulate water quality in stationary public water systems and the application of these requirements to mobile water systems with the capability of flying throughout the world has created implementation challenges. The proposed requirements are intended to tailor existing health-based drinking water standards to the unique characteristics of aircraft public water systems for the enhanced protection of public health against illnesses attributable to microbiological contamination. This is accomplished through multiple-barrier protection and procedural control measures. EPA believes that the combination of these components will better protect public health while building upon existing aircraft operations and maintenance programs, better coordinate federal programs that regulate aircraft water systems, and minimize disruption of aircraft flight schedules.

DATES: Comments must be received on or before July 8, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before May 9, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2005–0025, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ow-docket@epa.gov.*
- Mail: Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA Headquarters West Building, 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–OW–2005–0025. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Richard Naylor, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3847; e-mail address: *naylor.richard@epa.gov*. For general information, contact the Safe Drinking Water Hotline, telephone number: (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by the proposed Aircraft Drinking Water Rule include air carriers that operate aircraft public water systems using finished surface water, finished ground water under the direct influence of surface water (GWUDI), or finished ground water. Regulated categories and entities include:

Category	NAICS code	Examples of regulated entities
Scheduled passenger air transportation.	481111	Air carriers.
Nonscheduled chartered passenger air transportation.	481211	Air carriers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your air carrier is regulated by this action, you should carefully examine the applicability criteria in section § 141.800 of this proposed rule. If you

have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **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 *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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

C. Abbreviations Used in This Notice

ADWR: Aircraft Drinking Water Rule.
ANSI: American National Standards Institute.
AOC: Administrative Order on Consent.
ATA: Air Transport Association.
BMP: Best Management Practice.
CDC: Centers for Disease Control and Prevention.
CFR: Code of Federal Regulations.
CRMP: Comprehensive Representative Monitoring Plan.
CWS: Community Water System.
DBP: Disinfection Byproducts.
E. Coli: Escherichia coli.
EO: Executive Order.
EPA: United States Environmental Protection Agency.
FAA: United States Federal Aviation Administration.
FDA: United States Food and Drug Administration.
FR: Federal Register.
GWS: Ground Water System.
GWUDI: Ground Water Under the Direct Influence of Surface Water.
HACCP: Hazard Analysis and Critical Control Point.
HHS: Department of Health and Human Services.
HPC: Heterotrophic Plate Count.
ICC: Interstate Carrier Conveyance.
ICR: Information Collection Request.
IESWTR: Interim Enhanced Surface Water Treatment Rule.
LIMS: Laboratory Information Management System.
mL: Milliliters.
MCL: Maximum Contaminant Level.
MCLG: Maximum Contaminant Level Goal.
MDRL: Maximum Disinfectant Residual Level.
mg/L: Milligrams per Liter.
NASA: National Aeronautics and Space Administration.
NCWS: Non-Community Water System.
NDWAC: National Drinking Water Advisory Committee.
NPDWR: National Primary Drinking Water Regulation.
NSF: NSF International.
NTNCWS: Non-Transient Non-Community Water System.
NTTAA: National Technology Transfer and Advancement Act.
PWS: Public Water System.
OMB: Office of Management and Budget.
QAPP: Quality Assurance Project Plan.
RFA: Regulatory Flexibility Act.
SAB: Science Advisory Board.
SBA: Small Business Association.
SDWA: Safe Drinking Water Act.
SDWIS: Safe Drinking Water Information System.
SWTR: Surface Water Treatment Rule.
TC: Total Coliform.
TCR: Total Coliform Rule.
TNCWS: Transient Non-Community Water System.
TT: Treatment Technique.
UMRA: Unfunded Mandates Reform Act.
WHO: World Health Organization.
WSG: Water Supply Guidance.
WSP: Water Safety Plan.

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II. Background

A. Legal Authority

EPA is proposing this regulation under the authority of the Safe Drinking Water Act (SDWA), as amended, 42 U.S.C. 300f *et seq.*, primarily sections 1401, 1411, 1412 and 1450. Under SDWA, EPA establishes minimum requirements for tap water provided to the public, known as the National Primary Drinking Water Regulations or NPDWRs; these standards are applicable to ''public water systems.'' SDWA Section 1401 and EPA's regulations define a ''public water system'' (PWS) as a system for providing water for human consumption to the public through

pipes or other constructed conveyances and that regularly serves an average of a least twenty-five individuals daily, at least 60 days per year. 40 CFR 141.2.

All public water systems are subject to the NPDWRs unless they are excluded from regulatory requirements under SDWA Section 1411. Section 1411 excludes from regulation any public water system that receives all its water from another regulated public water system, does not sell or treat the water, and is not a ''carrier which conveys passengers in interstate commerce.'' The classes of interstate carrier conveyances (ICCs) include aircraft, trains, buses, and water vessels. As a result, all ICCs that regularly serve water to an average of at least twenty-five individuals daily, at least 60 days per year are public water systems and are currently subject to existing NPDWRs regardless of whether they treat or sell the water. Due to the unique characteristics of aircraft water systems and demonstrated implementation challenges, EPA has decided that a new NPDWR specifically tailored to aircraft water systems is necessary and an Agency priority. EPA may decide to tailor existing requirements to other classes of ICCs in the future.

B. Purpose of the Proposed Rule

The primary purpose of the proposed Aircraft Drinking Water Rule (ADWR) is to ensure that safe and reliable drinking water is provided to aircraft passengers and crew. This entails providing air carriers with a feasible way to comply with SDWA and the NPDWRs. The existing NPDWRs were designed primarily with traditional, stationary public water systems in mind. Some of these requirements have proven difficult to implement when applied to aircraft water systems, which are operationally very different. For example, aircraft must maintain rigorous operating schedules. They fly to multiple destinations throughout the course of any given day and may board drinking water from sources at any of these destinations. Aircraft board water from airport watering points via temporary connections. Aircraft drinking water safety depends on a number of factors including the quality of the water that is boarded from these multiple sources, the care used to board the water, and the operation and maintenance of the onboard water system and the water transfer equipment (such as water cabinets, trucks, carts, and hoses). These unique operational characteristics present different challenges, which EPA is addressing in this proposal.

EPA's NPDWRs establish different requirements based on the classification of the public water system (water system), including whether the system is a ''community,'' ''nontransient noncommunity,'' or ''transient noncommunity'' system and whether the system uses surface water or groundwater. Aircraft public water systems are considered transient noncommunity water systems (TNCWS), because they are not community water systems and they do not regularly serve at least 25 of the same persons over six months per year (See 40 CFR 141.2). Also, aircraft are regulated as surface water systems because they are likely to board finished drinking water from other public water systems that use surface water in whole or in part. EPA considers water for human consumption to include water for drinking and food preparation as well as water for brushing teeth and hand washing (see 63 FR 41941 (August 5, 1998)). Therefore, if an aircraft has a sink in the lavatory, then the water provided to that sink must be suitable for human consumption.

C. Scope of Proposed Rule

The proposed ADWR only addresses aircraft regulated under SDWA. SDWA does not regulate aircraft water systems operating outside the U.S.; however, EPA is supporting an international effort led by the World Health Organization (WHO) to develop international guidelines for aircraft drinking water. The proposed ADWR applies to the onboard water system only. EPA defers to the Food and Drug Administration (FDA) with respect to regulating watering points such as water cabinets, carts, trucks, and hoses from which aircraft board water. Aircraft that do not provide water for human consumption or those with water systems that do not regularly serve an average of at least twenty-five individuals daily at least 60 days out of the year do not meet the definition of a public water system; these aircraft are not regulated under the NPDWRs or covered under the new NPDWR proposed today. An estimated 63 air carriers and 7,327 aircraft public water systems are covered by this proposal.

D. Potential Health Concerns Associated With Aircraft Water Systems

The proposed ADWR assumes that only finished water is boarded on aircraft. Finished water means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (*e.g.*, supplemental disinfection, addition of corrosion control chemicals) (40 CFR 141.2). The assumption that only finished water is boarded on aircraft is based on a FDA requirement that only potable water may be provided for drinking and culinary purposes on interstate carrier conveyances (ICCs) (21 CFR 1240.80). Aircraft public water systems that are boarding water that is not finished water will continue to be subject to existing NPDWRs and will not be subject to the new NPDWR proposed today. However, even when the water boarded is finished water, the opportunity exists for microbiological organisms to be introduced during the act of transferring the water from the supplier truck, cabinet, or cart to the aircraft water system, or for biofilm to develop within the water system itself.

The proposed ADWR seeks to protect against disease-causing microbiological contaminants or pathogens through the required development and implementation of aircraft water system operation and maintenance plans that include best management practices, air carrier training requirements, and periodic sampling of the onboard drinking water. Testing drinking water for each individual pathogen is not practical, nor feasible. Instead, water quality and public health professionals use total coliform bacteria as an indicator organism. Total coliforms are a group of closely related, mostly harmless bacteria that live in soil and water as well as in the guts of animals. The presence of total coliforms in drinking water suggests that there may be disease-causing agents in the water or there has been a breach, failure, or other change in the integrity of the drinking water. Normally, total coliforms are not harmful to human health. However, if Escherichia coli (E. coli), a type of coliform bacteria, is present, it can be harmful to human health. Total coliforms are inactivated, or made harmless, by treatment or die off naturally in a manner similar to most bacterial organisms. However, if total coliforms are found in a water system, the system may be vulnerable to disease-causing bacteria (*i.e.*, pathogens), whether pathogens are actually present or not. If an aircraft water system is not disinfected and/or flushed on a routine basis, it may be at risk for biofilm or other bacterial growth.

Most of the bacteria in drinking water distribution systems are associated with biofilms. There are several studies showing that pathogenic organisms can survive longer and have greater resistance to chlorine when occurring in biofilms than in drinking water (Lehtola *et al.*, 2007). Most aircraft water tanks

are either topped off or drained on a daily basis. However, there are occasional situations when the water may become stagnant. Some examples are aircraft that are occasionally taken out of service for an extended maintenance period, or cold weather conditions that affect the ability to drain tanks (due to concerns about the drained water freezing on the tarmac). Additionally, aircraft with water in their tanks that experience long layovers or overnight stays in high temperature areas have a higher potential for rapid growth of organisms. There are no data on outbreaks of illness caused by drinking water on aircraft. That does not mean there is no illness because there is a high rate of underreporting of illnesses caused by drinking water contamination. Illness resulting from consuming contaminated aircraft water would be no exception to this because the population onboard disperses after a flight and even if passengers develop gastrointestinal symptoms within hours of deplaning, they are unlikely to associate the illness with the aircraft water or to contact the air carrier or any government agency to report the illness. The effects of waterborne disease are usually acute, resulting from a single or small number of exposures. Most waterborne pathogens cause gastrointestinal illness with diarrhea, abdominal discomfort, nausea, vomiting, or other symptoms. Most such cases involve a sudden onset and generally are of short duration in healthy people. Some pathogens (*e.g., Giardia* and *Cryptosporidium*), however, may cause extended illness, lasting weeks or longer in otherwise healthy individuals. Waterborne pathogens are particularly harmful to sensitive populations, such as the immuno-compromised, and can sometimes prove fatal.

E. Regulatory and Enforcement History

SDWA, including the amendments of 1986 and 1996, require EPA to promulgate NPDWRs to prevent tap water contamination that may adversely affect human health. As TNCWSs, aircraft are subject to certain NPDWRs specific to this category of systems. EPA published Water Supply Guidance 29 (WSG 29) in October 1986 to assist ICC operators, including air carriers, in complying with these standards (USEPA 1986). WSG 29 described an alternative under which the operator of an ICC water system could use an approved operation and maintenance program in lieu of monitoring requirements. However, this guidance did not alter the regulatory requirements for ICCs. Since then, EPA has determined that a new rule specifically adapted to aircraft water systems would provide a clearer and more implementable regulatory framework for aircraft water systems. EPA suspended the earlier guidance in 2003 and is no longer approving operation and maintenance programs in lieu of monitoring under WSG 29 while the ICC program is being revised.

In 2004, EPA found all aircraft water systems to be out of compliance with the NPDWRs. According to the air carriers, it is not feasible for them to comply with all of the monitoring that is required in the existing regulations. Subsequently, EPA tested 327 aircraft of which 15 percent tested positive for total coliform. In response to these findings, EPA embarked on a process to tailor the existing regulations for aircraft public water systems. In the interim, EPA placed 45 air carriers under Administrative Orders on Consent (AOC) that will remain in effect until tailored aircraft drinking water regulations are final. The air carrier AOCs combine sampling, best management practices, corrective action, public notification, and reporting and recordkeeping to ensure public health protection.

Many drinking water rules for systems using surface water or ground water under the direct influence of surface water (GWUDI) relate to the treatment of source water, but because aircraft board finished water, the responsibility for treating the water is borne by the water supplier from which aircraft obtain their water. This situation is comparable to traditional, stationary water systems that are consecutive systems (i.e., buy finished water from other PWSs). The proposed ADWR adapts to aircraft water systems the applicable requirements from the Total Coliform Rule, the suite of surface water treatment regulations, and the Public Notification Rule, the relevant sections of which are summarized as follows.

1. The 1989 Total Coliform Rule

The Total Coliform Rule (TCR) (USEPA, 1989) applies to all public water systems. Because monitoring water systems for every possible pathogenic organism is not feasible, coliform organisms are used as indicators of possible source water and distribution system contamination. Coliforms are easily detected in water and are used to indicate a water system's source and distribution system vulnerability to pathogens. In the TCR, EPA sets a Maximum Contaminant Level Goal (MCLG) of zero for total coliforms. EPA also sets a monthly Maximum Contaminant Level (MCL) for total coliforms and requires testing of total coliform-positive cultures for the presence of E. coli or fecal coliforms. E. coli and fecal coliforms indicate more immediate health risks from sewage or fecal contamination and are used as a trigger of acute contamination. In addition, the TCR requires sanitary surveys (i.e., onsite review of the water source, facilities, equipment, operation and maintenance of a PWS for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water). The TCR requires sanitary surveys by the State primacy agency every 5 years for systems that collect fewer than 5 total coliform samples per month (those serving 4,100 people or fewer). A TNCWS using surface water serving less than 1,000 persons daily would typically be required to take one total coliform sample per month for routine sampling requirements.

2. Surface Water Treatment Regulations

EPA has promulgated a suite of regulations to address microbiological contamination of surface water. These regulations include the Surface Water Treatment Rule (SWTR), the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Filter Backwash Recycling Rule, and the Long Term 1 and Long Term 2 Enhanced Surface Water Treatment Rules. These rules apply monitoring and treatment technique requirements to protect the public from microbiological pathogens in drinking water such as bacteria, viruses, *Giardia lamblia,* and *Cryptosporidium.* The monitoring and treatment technique requirements must be met prior to water entering the distribution system. Aircraft which board only finished water are not required to provide source water treatment or to perform monitoring of source water because these activities are the responsibility of the public water system from which the aircraft obtains finished water for boarding. However, the SWTR includes provisions for maintaining a detectable distribution system disinfectant residual and for monitoring distribution system disinfectant residuals at the same time and location as used for total coliform monitoring. Because disinfectant residual monitoring is required in the distribution system, current regulations require aircraft to perform this monitoring. A TNCWS using surface water serving less than 1,000 persons daily would typically be required to take one disinfectant residual sample per month. Additionally, the IESWTR requires primary enforcement agencies to conduct sanitary surveys for all

surface water and GWUDI systems regardless of size, and specifies a frequency of every 5 years for noncommunity water systems.

3. The Public Notification Rule

Public water systems must give notice to persons served by the water system for violations of NPDWRs and for other situations posing a risk to public health from drinking water. The term ''NPDWR Violations'' is used in the public notification regulations to include violations of the MCL, Maximum Residual Disinfectant Level (MRDL), treatment technique (TT), monitoring, and testing procedure requirements. Public notice requirements are divided into three tiers, which take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. Due to the transient nature of the public served by TNCWSs, public notice is typically provided through posting of the notice at locations where the public may access drinking water from the water system.

4. Roles of the FAA and FDA in Regulating Aircraft Drinking Water

Drinking water safety on air carriers is jointly regulated by the EPA, the Food and Drug Administration (FDA), and the Federal Aviation Administration (FAA). EPA regulates the parent public water systems within the United States that supply water to the airports and the drinking water once it is onboard the aircraft. EPA is responsible for developing and implementing the NPDWRs for all public water systems, including public water systems on aircraft. FAA requires that air carrier companies submit operation and maintenance programs (14 CFR part 43, 14 CFR part 91, 14 CFR part 121) for all parts of the aircraft, including the water system. Under the current Memorandum of Understanding between EPA and FDA, the FDA takes the lead in regulating culinary water and the watering points where aircraft obtain water at the individual airports. FDA is responsible for approving all ICC watering points (21 CFR 1240.83(a)), (1) to ensure the water supply meets EPA's NPDWRs and (2) to ensure the methods (i.e., water transfer process) of and facilities (e.g., water cabinets, carts, trucks, containers, and hoses) for delivery of such water to the conveyance and the sanitary conditions surrounding such delivery prevent the introduction, transmission, or spread of communicable diseases.

In addition to the EPA and FDA requirements, air carriers have many different on-going programs and practices for assessing and correcting deficiencies and risks associated with the drinking water supply and related safety, security and sanitation issues. Such programs and practices may include FAA Airworthiness Standards: Transport Category Airplanes (airworthiness maintenance and inspection program) (14 CFR part 43, 14 CFR part 91, and 14 CFR part 121); vulnerability assessments/security programs; FDA regulations for Interstate Conveyance Sanitation (USFDA 2005); FDA sanitary surveys of watering points and servicing areas; and FDA certification of aircraft sanitation systems including potable (finished) water, sewage, and galleys. These programs may contribute valuable information related to the condition of the aircraft water system and water quality. EPA has worked closely with FDA and FAA to ensure that this proposal for aircraft water system regulation is integrated with these programs to avoid unnecessary duplication.

III. Proposed Rule Development

A. Stakeholder Involvement

In November 2004, when EPA announced that it had initiated a rulemaking process to develop regulations for aircraft public water systems, the Agency committed to working collaboratively with other federal agencies overseeing the air carrier industry, industry representatives, and interested stakeholders to identify appropriate requirements to ensure safe drinking water onboard aircraft. This collaborative rule development process has allowed EPA an opportunity to obtain information from, and hear the concerns and questions of stakeholders who would be affected by this rule in an organized and formal process prior to development of this proposed rule.

EPA has held three public meetings; these were held in June 2005, January 2006, and March 2007. All three events were well-attended by stakeholders representing a diverse group of interests including: Air carriers, airports, flight attendants, pilots, passengers, public health officials, environmental groups, states, public water systems, water treatment and equipment vendors, laboratories, foreign government agencies, and other federal agencies (e.g., FDA, FAA, and CDC).

EPA used a third-party skilled in conflict resolution to help facilitate the process and to involve the full range of interests. Given the number and complexity of issues associated with aircraft drinking water, EPA began with an assessment process to identify options to support and engage the full range of stakeholders in the regulatory development process.

In June 2005, EPA held a public information meeting to kick-off the rulemaking process. The meeting was followed by the development of a stakeholder assessment report, produced by the third-party facilitator, which is available in the docket for this rule. This report included recommendations for a series of joint education workshops to bring diverse stakeholders together to identify and understand the issues and to provide input and comment on regulatory approaches and options.

The first workshop was held on January 18–19, 2006. This workshop provided an opportunity for stakeholders to learn about aircraft water systems and watering points, current regulations, and other information relevant to the rulemaking. The stakeholders were encouraged to share their initial ideas about the issues that should be addressed in developing the proposed rule. EPA also presented for consideration by the stakeholders a conceptual approach for the rule, which draws on the principles of the Hazard Analysis and Critical Control Point (HACCP) and multiple barrier approaches. This systematic approach, known as the Water Safety Plan (WSP) approach, is described in greater detail in section III. C. Framework for Proposed Rule Development.

The second workshop was conducted on March 28–29, 2007. At this workshop, EPA presented for comment examples of the application of the Water Safety Plan approach to aircraft water systems. Also, EPA presented the preliminary monitoring data collected under the air carrier Administrative Orders on Consent. The majority of the workshop time was spent soliciting stakeholder input on topics critical to the development of the ADWR including monitoring, best management practices, public and crew notification, reporting and recordkeeping requirements, and program oversight and verification.

B. Data Collection Efforts

In developing the ADWR proposal, EPA analyzed preliminary monitoring results submitted under the Administrative Orders on Consent (AOCs) from 2005–2007. In addition, to gain a better understanding of the drinking water quality on domestic aircraft as indicated by total coliform, E.coli/fecal coliform, and chlorine residual, EPA drew upon the results of the following three studies: (1) A

voluntary monitoring study completed by the Air Transport Association (ATA) in Fall 2003; (2) an EPA study of aircraft NPDWR compliance completed in 2004; and (3) the Canadian Inspection Program monitoring results completed in 2006

The EPA data summaries presented here should not be used to draw any definitive conclusions. The AOC dataset is incomplete and therefore considered preliminary since it represents 15 out of 45 domestic air carriers under AOCs with EPA. The 45 domestic air carriers were placed under AOCs to resolve non-compliance with the Safe Drinking Water Act and the National Primary Drinking Water Regulations. The AOCs established interim aircraft water testing and disinfection protocols. Each of the air carriers, at a minimum, was required to implement the following regular monitoring and disinfection protocols for its entire fleet: Regular monitoring of aircraft water systems for coliforms and disinfectant residuals; regular disinfection of aircraft water systems and water transfer equipment; corrective action for total coliform-positive sample(s); analysis of any total coliform-positive culture media for the presence of fecal coliforms or E. coli; provision of public notice or restriction of water service when there is a total coliform-positive sample result; performance of a study of possible sources of contamination that exist outside of the aircraft; and inclusion of information regarding various aspects of its domestic and foreign water practices.

Specific to the AOC sampling data, air carriers were required to submit two documents for EPA approval that set the stage for monitoring and disinfection protocols/procedures: A Comprehensive Representative Monitoring Plan (CRMP) and a Quality Assurance Project Plan (QAPP). The CRMP describes the air carrier's sampling and disinfection processes and protocols for collecting samples within a 12-month period. The QAPP describes the air carrier's Quality Assurance/Quality Control processes to ensure good quality data and the methods for collecting and assessing data, such as use of State- or EPA-certified laboratories and EPA-approved analytical methods for analyzing drinking water samples. Once the plans were approved, air carriers were required to collect and submit their aircraft water system sampling data to EPA. As reflected in Table III–1, air carriers followed slightly different monitoring and disinfection protocols based on their fleet size.

TABLE III–1.—MONITORING AND DISINFECTION PROTOCOLS AS REQUIRED UNDER THE AOCS

	Air carriers with greater than 20 aircraft	Air carriers with less than or equal to 20 aircraft
MONITORING [1]		
For each sample event, collect at least one sample from a galley and one from a lavatory for Total Coliform (TC) and Disinfectant Residual (total residual chlorine)	✓	✓
Sample 25% of fleet quarterly	✓	.....
Sample all fleet quarterly	.....	✓
DISINFECTING AND FLUSHING [2]		
Disinfect and flush each aircraft's water system no less than quarterly	✓	✓
Disinfect and flush watering points (e.g., water trucks, carts, cabinets, hoses) no less than monthly	✓	✓

[1] The air carrier was required to use State- or EPA-certified laboratories and EPA-approved analytical methods for analyzing drinking water samples.

[2] If the air carrier has a pre-AOC monitoring and disinfecting program requiring a higher frequency, the air carrier was required to continue in accordance with their program, unless modification was requested and approved by EPA.

As of May 31, 2007, of the 45 air carriers under AOCs, EPA has analyzed preliminary drinking water sampling data from 15 air carriers consisting of 2,316 aircraft out of an estimated total fleet size of 5,558. The total number of samples (routine and repeat) was 12,099. Of these samples, 3.1 percent (378 samples) were total coliform-positive. Of the 378 total coliform-positive samples, 2.4 percent (9 samples) were E. coli/fecal coliform-positive. Of a total of 7,489 routine chlorine residual samples taken, 26.1 percent (1,957) resulted in a non-detect. However, in relating the preliminary AOC sampling data to other aircraft water quality studies only the routine samples were used. Repeat samples were not used because they by nature have a higher probability of being total coliform-positive since repeats are taken after a routine sample is total coliform-positive. In addition, the other studies did not take repeat samples, therefore, the routine samples are most analogous to the data collected under the other studies.

Therefore, in determining an estimated baseline of domestic air carrier drinking water quality the following was observed in the preliminary AOC data: Out of 7,812 routine samples, 2.8 percent (222 samples) were total coliform-positive. Of the 222 total coliform-positive samples, 2.3 percent (5 samples) were E. coli/fecal coliform-positive. Of the 3,952 routine chlorine residual samples taken, 21.5 percent (848) resulted in a non-detect.

Under a voluntary study coordinated with EPA, ATA sampled 265 passenger aircraft operated by eight ATA-member U.S. air carriers. As noted by ATA, these eight air carriers represent the majority of the U.S. commercial passenger fleet, and serve both domestic and international routes. The aircraft were randomly selected and samples were generally collected from the galley, except in some cases where the galley faucets were equipped with filters, efforts were made to collect residual disinfectant samples from the lavatory. The samples were analyzed for total coliform (and in the case of a total coliform-positive result, the sample was tested for E. coli/fecal coliform), total residual chlorine, turbidity, total nitrate, and nitrite. Regarding microbiological testing, of the 265 aircraft sampled, 2.6 percent (7 aircraft) were total coliform-positive; there were no fecal coliform or E. coli-positive samples. Water samples from forty-one percent of the aircraft had non-detectable chlorine residuals (ATA 2003).

In the 2004 EPA NPDWR Compliance study, 327 passenger aircraft belonging to ATA and non-ATA members were randomly tested at 12 U.S. airports that served both domestic and international routes. EPA analyzed the drinking water samples from galleys and lavatories for total coliform (and in the case of a total coliform-positive result, the sample was tested for E. coli/fecal coliform), total

residual chlorine, heterotrophic plate count, total nitrate, and nitrite. In regard to microbiological presence, 15 percent (49/327) of the aircraft tested positive for total coliform, and 4.1 percent (2/49 aircraft) of these total coliform positive aircraft also tested positive for E. coli/fecal coliform. Twenty-one percent (69/327) of the aircraft tested had a non-detectable chlorine residual.

Under the Canadian Inspection Program, Health Canada randomly inspected 431 aircraft for microbiological presence in drinking water. Of the 431 aircraft tested, 15.1 percent (65 aircraft) were total coliform-positive, and 7.7 percent (5/65 aircraft) of these total coliform positive aircraft were also E. coli positive. Most of the contamination (4 samples) was found in water from the lavatory faucets. The Canadian study did not test for chlorine residual (Canada 2007a and 2007b).

It is important to note that the intended purpose and use of the preliminary AOC and the other aircraft sampling results were to protect public health by providing an understanding of the quality of airline drinking water. Although they were not collected to drive the ADWR rulemaking process, these datasets provide important information for an estimated baseline of aircraft drinking water quality for total coliform, E. coli/fecal coliform, and residual chlorine.

Although it is difficult to complete a one-to-one comparison of the sampling results among the studies, observed differences may be attributed to several factors. For instance, best management practices and protocols (such as systematic sampling, disinfecting, and flushing procedures) established under the AOCs may have played a part in the varying results. These systematic protocols may have created a greater chance of consistency and effectiveness among the air carriers in implementing the operational and maintenance procedures of an aircraft water system. In addition, these findings suggest that best management practices are important for public health protection.

EPA will continue to collect and analyze the aircraft sampling data for the 45 air carriers under the AOCs. EPA will use the data to improve the Agency's understanding of aircraft drinking water quality relevant to microbiological controls. A summary of the final results will be released along with available sampling data from the 45 air carriers under AOCs. Docket ID No. EPA–HQ–OW–2005–0025.

C. Framework for Proposed Rule Development

For today's proposal, EPA has considered both the existing NPDWRs applicable to aircraft water systems—the Total Coliform Rule, the Surface Water Treatment Regulations and the Public Notification Rule—and a systematic risk management approach used for food and water safety by other agencies, which EPA believes can be particularly effective when dealing with mobile sources of drinking water. The resulting proposed rule is intended to consolidate the three existing NPDWRs into one new NPDWR and modify them, based on the Water Safety Plan approach described as follows, so that the drinking water standards can be more effectively implemented for aircraft water systems and better integrated with FDA and FAA programs and requirements.

1. HACCP and Water Safety Plan Approaches

EPA believes that an effective means of assuring safe drinking water onboard aircraft is through the application of a systematic risk management approach referred to as the Water Safety Plan (WSP) approach. The Water Safety Plan concept was developed by the World Health Organization (WHO) as part of the 3rd edition of its drinking water guidelines (WHO 2004). It is based on the Hazard Analysis and Critical Control Point (HACCP) concepts and the multiple barrier approach to protecting public health.

The basic HACCP concepts were originally developed in 1959 by the Pillsbury Company with cooperation and participation from the National Aeronautics and Space Administration (NASA), the Natick Laboratories of the U.S. Army, and the U.S. Air Force Space Laboratory Project Group. The purpose was to ensure food and beverage safety from microbiological hazards for the first NASA manned space missions. Since the 1980s, the HACCP system has been adopted by food and beverage industries world-wide, where it forms an important part of their ''food safety plans.'' For example, the FDA has adopted the HACCP system as an effective approach for its food safety program. FDA utilized the HACCP approach in the final rules for the seafood and juice industries. HACCP guidelines developed by WHO, known as Codex Alimentarius, have been adopted internationally as the primary recognized food safety methodology for risk management. The current HACCP guideline (WHO, 1997) was developed by the Codex Alimentarius Commission.

In the multiple barrier approach, technical and managerial barriers help prevent contamination at the source, treatment, distribution, and tap to provide a safe supply of drinking water for consumers. The barriers include risk prevention, risk management, monitoring and compliance, and individual action. As an enhancement of the HACCP approach, the Water Safety Plan approach identifies control measures not only at critical control points, as is done for HACCP, but also at the point of contamination where the hazardous event occurs as well as downstream of the potential contamination point. The intent is to enable the effect of the multiple barriers to be assessed together (Davison et al., 2005). The Water Safety Plan approach continues to evolve as the water industry gains experience by developing and implementing Water Safety Plans.

2. Proposed Rule Approach

The proposed approach for this rulemaking effort includes elements of the HACCP approach and WHO's Water Safety Plan approach and builds on the foundation of the controls established under the existing NPDWRs applicable to aircraft water systems. This proposed regulation does not require each air carrier to develop its own Water Safety Plan (WSP). Instead, the WSP approach was used to outline the priority hazards and the control measures that could be implemented to control these hazards in the entire aircraft water supply and transfer chain. By looking holistically at the entire process, EPA ensured a collaborative working relationship with other federal agencies overseeing the air carrier industry. This holistic approach will minimize duplication of effort and regulation by multiple federal agencies over the same segment of the process. It also helps minimize concerns of over-regulation in one segment of a process to address an issue that could be more effectively handled in another segment of the process. Once the hazards and potential control measures were identified, EPA could then focus on the specific area of its jurisdiction, the onboard water system.

3. Identified Hazard Events and Potential Control Measures

The following are examples of the primary hazard events and potential control measures for aircraft water systems identified through the WSP approach.

• *Water to be boarded does not meet NPDWRs applicable to TNCWSs.* The potential control measure is to prevent boarding of water, if operational needs (*e.g.*, flushing of toilets) can be met

without boarding additional water. If water must be boarded, appropriate control measures are to: Restrict public access, provide public notification, including posting notices at lavatory and galley taps stating that the water is not for consumption; provide bottled water for coffee making and drinking; providing antiseptic alcohol-based hand gels or wipes for handwashing; disinfecting and flushing the aircraft water system as soon as possible; and demonstrating satisfactory aircraft water quality through follow-up sampling before resumption of unrestricted public access to the aircraft water system.

• *Air carrier or aircraft crew is notified that water already boarded does not meet NPDWRs applicable to TNCWSs.* The potential control measures are to: Restrict public access, provide public notification, including posting notices at lavatory and galley taps stating that the water is not for consumption; providing bottled water for coffee making and drinking; providing antiseptic alcohol-based hand gels or wipes for handwashing; disinfecting and flushing the aircraft water system as soon as possible; and demonstrating satisfactory aircraft water quality through follow-up sampling before resumption of unrestricted public access to the aircraft water system.

• *Use of a watering point, including transfer and delivery systems, not approved by FDA.* The potential control measure is for the air carrier to obtain approval from FDA for new watering points or when changing watering points.

• *Contamination or cross contamination due to unsanitary practices.* The potential control measures are to: Clean and disinfect hoses, transfer pumps, water trucks, and other equipment; develop written standard operating procedures (SOPs) and provide training for sanitary water transfer practices and aircraft cleaning; conduct total coliform monitoring; restrict public access, provide public notification, including posting notices at lavatory and galley taps stating that the water is not for consumption; providing bottled water for coffee making and drinking; providing antiseptic alcohol-based hand gels or wipes for handwashing; disinfecting and flushing the aircraft water system as soon as possible; and demonstrating satisfactory aircraft water quality through follow-up sampling before resumption of unrestricted public access to the aircraft water system; and conducting audits or inspections.

• *Backflow from unprotected cross connection, failure of backflow prevention devices, or cross contamination from water line break.* The potential control measures are to: Identify possible cross connections and install backflow prevention devices as warranted; repair failed backflow prevention devices; repair water line breaks; disinfect and flush the aircraft water system as soon as possible; and resample aircraft water quality before returning to service.

• *Improperly designed aircraft water system.* The potential control measure is to obtain FDA review and approval of plans and specifications (Certificate of Sanitary Construction) for new aircraft water systems.

• *Bacterial growth in aircraft water system.* The potential control measures are to: Conduct routine total coliform monitoring; and routinely disinfect and flush the aircraft water system.

IV. Elements of the Proposed Aircraft Drinking Water Rule

The following sections describe the elements of the aircraft drinking water rule as proposed by EPA. The proposed rule has significant operational advantages over the other more prescriptive alternatives, which are described in section V. EPA specifically designed the proposed rule to allow air carriers to follow the manufacturer recommendations for disinfecting and flushing aircraft water systems, instead of prescribing the frequency, chemical type and concentration to be used. Another advantage of the proposed rule over the approaches described in the alternatives is that by utilizing the manufacturer recommendations for disinfection and flushing, the rule requirements will automatically evolve (another stakeholder recommendation) with technological improvements in aircraft water tank lining and piping materials and as new more effective disinfectants are developed.

EPA requests comment on all aspects of this rule. Please note, however, that EPA is not requesting, and will not consider, comments on any aspect of the TCR, surface water treatment regulations, Public Notification Rule or any other NPDWR other than as applied to aircraft water systems in this proposal. In addition to rule requirements, EPA identifies specific requests for comment on subject matters pertaining to the proposed rule.

A. Sampling Requirements

1. Coliform Sampling Plan

As discussed above, the existing TCR requires testing for total coliforms in water systems. Under this proposal, EPA is requiring each air carrier to develop a coliform sampling plan (within six months after the final rule is published in the **Federal Register**) for each aircraft that identifies the following: (1) Coliform sample collection procedures, (2) sample tap location(s) representative of the aircraft water system, including both galley and lavatory taps when available, (3) frequency and number of routine coliform samples to be collected (4) frequency of routine disinfection and flushing as specified in the operation and maintenance plan, and (5) procedures for communicating sample results promptly so that any required actions including repeat and follow-up sampling, corrective action, and notification of passengers and crew may be conducted in a timely manner. The development of a sampling plan will assist the air carrier in tracking regulatory requirements, identifying coliform detection trends, if any exist, and in maintaining compliance.

2. Coliform Sampling Requirements

In keeping with the current TCR, air carriers need only determine the presence or absence of total coliforms in water samples collected from aircraft water systems; a determination of total coliform density would not be required. EPA believes this aids in making the sampling process more efficient and avoids unnecessary analysis. In addition, this proposed rule specifies that only analytical methodologies approved by EPA are to be used for sampling. For routine monitoring, each aircraft water system water sample must be 100 mL. One sample must be taken from a lavatory and one sample from a galley; each must be analyzed for total coliform. EPA believes the selection of sample taps from both the lavatory and the galley is necessary since tap options throughout these types of water systems is limited. If only one water tap is located in the aircraft water system due to aircraft model type and construction, then a single tap may be used to collect two separate 100 mL samples.

Routine coliform sampling should be representative of the general conditions of the aircraft water system. To ensure that results of routine samples are not inadvertently skewed by sampling too soon after a disinfection event, routine coliform samples must not be collected within 72 hours after completing disinfection and flushing procedures. EPA believes that spacing routine samples evenly across monitoring periods will help. This is necessary in order to capture a representative sample from normal aircraft water system operations. Additional, or special, coliform sampling is always encouraged and recommended by EPA.

Routine coliform monitoring frequencies are as follows:

- If the air carrier disinfects and flushes the entire water system at least quarterly, then coliform monitoring must occur at least annually;
- If the air carrier disinfects and flushes the entire water system one to three times per year, then coliform monitoring must occur at least quarterly; or
- If the air carrier disinfects and flushes the entire water system less than once per year, then coliform monitoring must occur at least monthly.

It should be noted that this is the first NPDWR that requires disinfection and flushing as a required extra barrier for the protection of public health. EPA understands that most of the air carrier maintenance programs employ water system disinfection and flushing; however, EPA believes that making three sampling frequency options available to air carriers for the aircraft water systems that they operate provides the flexibility to meet the evolving needs of the industry while still providing adequate barriers of protection.

This proposal uses calendar-based monitoring and reporting frequencies. This basis is also consistent with EPA's current methods of oversight and is compatible with the Agency's current data systems. EPA is aware that the air carrier industry typically schedules maintenance or other activities based on aircraft flight hours or flight days. Scheduling activities on a calendar basis could lead to incompatibility and challenges in creating regular maintenance schedules. On the other hand, if an aircraft is not in frequent operation, basing aircraft water system activities on a flight time basis could lead to an extended calendar period before any actions are taken, which would not be protective of public health. EPA requests comment on whether the proposed calendar basis could reasonably be integrated with the air carrier industry's flight time basis, or if not, how the Agency should transpose the proposed requirements to an equivalent standard on a flight time basis.

B. Response to Sampling Results

1. *All routine coliform samples are negative.* If all routine samples are total coliform-negative in a monitoring period, then the air carrier must continue to maintain its routine monitoring for coliform based on the frequency required under the rule.

2. *The sample yields a positive result for total coliform.* If any routine or repeat coliform sample is total coliform-positive, then that total coliform-positive culture medium must be analyzed to determine if fecal coliforms or E. coli are present.

3. *One of two routine water samples test positive for total coliform, but negative for E. coli or fecal coliforms.* In response to a single total coliform-positive sample result that is fecal/*E. coli* negative, the air carrier must perform at least one of the following:

- Disinfection and flushing no later than 72 hours after the laboratory notifies the air carrier of the positive result. Follow-up samples must be collected after disinfection and flushing is performed to ensure the effectiveness of the process. A complete set of post disinfection and flushing follow-up sample results (i.e., one from the lavatories and one from the galleys) must be total coliform-negative before the air carrier provides water from the aircraft water system to passengers and crew and returns to the routine monitoring frequency for coliform; or
- Repeat Sampling. Collect four 100 mL repeat samples within 24 hours of being notified of the positive result. Repeat samples must be collected and analyzed from four taps within the aircraft water system: the tap which resulted in the total coliform-positive sample, one other lavatory tap, one other galley tap, and one other tap; if less than four taps exist, then a total of four 100 mL samples must be collected and analyzed from the available taps within the aircraft water system. If no repeat sample is total coliform-positive, the system returns to its routine monitoring schedule and no further follow-up is required.

4. *Any sample test result is fecal coliform positive or E. coli-positive.* Since fecal coliform or E. coli bacteria indicate the potential presence of contaminants that can cause acute health risks, EPA believes it is necessary to take immediate corrective action for the protection of public health. The aircraft water system is not a traditional water system and the air carrier must therefore take additional measures to prevent any disease or illness. If any routine or repeat sample is fecal coliform-positive or E. coli-positive, then the air carrier must perform all of the following:

- Restrict public access to the aircraft water system which includes providing notification to passengers and crew as soon as possible but no later than 24 hours after being notified of the positive result.
- Conduct disinfection and flushing prior to resumption of unrestricted public access to the aircraft water system or no later than 72 hours if the aircraft water system cannot be physically disconnected/shut off to the crew and passengers.
- Collect follow-up samples after disinfection and flushing is performed to ensure the effectiveness of the process. A complete set of post disinfection and flushing follow-up sample results must be total coliform-negative before the air carrier provides water from the aircraft water system to passengers and crew and returns to the routine monitoring frequency for coliform. Follow-up sample procedures must, at a minimum, follow routine coliform sample locations and procedures.

5. *More than one sample resulted in a total coliform-positive but was fecal coliform-negative or E. coli-negative.* If more than one of any routine, repeat, or a combination of samples is total coliform positive and fecal coliform-negative or E. coli negative, then the air carrier must perform all of the following:

- Restrict public access to the aircraft water system which includes providing notification to passengers and crew as soon as possible but no later than 24 hours after being notified of the positive result.
- Conduct disinfection and flushing prior to resumption of unrestricted public access to the aircraft water system, or no later than 72 hours if the aircraft water system cannot be physically disconnected/shut off to the crew and passengers.
- Collect follow-up samples after disinfection and flushing is performed to ensure the effectiveness of the process. A complete set of post disinfection and flushing follow-up sample results must be total coliform-negative before the air carrier provides water from the aircraft water system to passengers and crew and returns to the routine monitoring frequency for coliform. Follow-up sample procedures must, at a minimum, follow routine coliform sample locations and procedures.

6. *Post disinfection and flushing follow-up sampling.* Follow-up samples are necessary to validate the effectiveness of the disinfection and flushing procedures. If one or more of the follow-up samples in a set of follow-up samples is total coliform-positive then, as a minimum, the air carrier must disinfect and flush again, then take a new set of follow-up samples. Both follow-up sample results must be total coliform-negative before the aircraft water system provides water to passengers and crew and the air carrier returns to the routine monitoring frequency for coliform.

7. *Failure to conduct routine coliform monitoring or analysis, or boarding water from a watering point not approved by the FDA*. If there was a failure to collect and analyze the required number of routine coliform samples, or water was boarded in the United States from a watering point not approved by the FDA, or outside the United States in a manner not in accordance with the air carrier's procedures for ensuring the water is safe, then the air carrier must perform all of the following:

• Provide notification to passengers and crew as soon as possible but in no case later than 24 hours after discovery of failure to collect required samples or after being notified by EPA of failure to collect required samples; or provide notification to passengers and crew as soon as possible but in no case later than 24 hours after boarding water from a watering point not approved by FDA.

• Conduct disinfection and flushing within 72 hours.

• Collect follow-up samples after disinfection and flushing is performed to ensure the effectiveness of the process. A complete set of post disinfection and flushing follow-up sample results must be total coliform-negative before the air carrier provides water from the aircraft water system to passengers and crew and returns to the routine monitoring frequency for coliform. Follow-up sample procedures must, at a minimum, follow routine coliform sample locations and procedures.

This situation does not require the same degree of restricted access because there is no specific indication that the water is not safe. However, to ensure public health protection, carriers must still warn passengers not to drink the water, and must provide a full explanation of the situation to the crew.

8. *Failure to conduct repeat or follow-up monitoring or analysis, or boarding water known to not meet NPDWRs applicable to TNCWSs*. If there was a failure to collect and analyze the required number of repeat or follow-up coliform samples, or water was boarded which is known to not meet NPDWRs, then the air carrier must perform all of the following:

• Restrict public access to the water system which includes providing notification to passengers and crew as soon as possible but no later than 24 hours after discovery of failure to collect required samples or after being notified by EPA of failure to collect required samples,

• Conduct disinfection and flushing prior to resumption of public access to the aircraft water system or no later than 72 hours if the aircraft water system cannot be physically disconnected/shut off to the crew and passengers.

• Collect follow-up samples after disinfection and flushing is performed to ensure the effectiveness of the process. A complete set of post disinfection and flushing follow-up sample results must be total coliform-negative before the air carrier provides water from the aircraft water system to passengers and crew and returns to the routine monitoring frequency for coliform. Follow-up sample procedures must, at a minimum, follow routine coliform sample locations and procedures.

This situation, in contrast to the one above, is one in which there is a specific indication that the water is or may not be safe to drink. In this case, in order to protect public health, the same level of restricted access and public notice is required as for situations in which there has been a positive coliform detection.

Restricted Access to the Water System

In any situation where there is an affirmative indicator of actual or potential contamination (e.g., more than one coliform-positive sample, a single fecal coliform- or e-coli-positive sample, water boarded from a known contaminated source, etc.), the carrier is required to restrict access to the water system as expeditiously as possible, but in no case more than 24 hours after the event triggering the requirement (e.g., positive sample result). Ideally, access to all lavatory and galley taps, built in coffee/tea maker, etc. should be physically shut off, and this is required where feasible. The carrier must also make provisions for alternatives such as bottled water and antiseptic alcohol-based hand gels or wipes. In cases where it is not feasible to physically prevent access, the carrier must provide notice in each lavatory, galley tap, etc., which clearly indicates to passengers and crew that the water is non-potable and should not be used for drinking, food or beverage preparation, teeth-brushing, hand washing, or any other consumptive use. Additional information must also be provided to the crew (see Section D. Notification Requirements to Passengers and Crew).

Request for Comment on Sampling Requirements and Response

1. Microbiological Indicators

The Agency's primary interest is in crafting a regulation for aircraft water systems that is both implementable and fully protective of public health. While current methods and indicators exist to provide meaningful characterization of safe drinking water, this proposal relies on coliform bacteria as an indicator of microbiological quality. A second indicator commonly used to gain insight on water quality is heterotrophic plate count (HPC).

The Surface Water Treatment Rule (SWTR) includes a provision which allows a system to conduct heterotrophic plate counts in lieu of measuring for residual disinfectant concentrations. Finished water with heterotrophic bacteria concentration less than or equal to 500 per mL is deemed to have a detectable disinfectant residual concentration for purposes of determining compliance with the SWTR. HPC sampling could be done at the same time and place as routine coliform monitoring, or more routinely such as monthly as an additional check. If heterotrophic counts are greater than 500/ml, then corrective action could be required.

EPA requests comment on whether HPC should be allowed, required, or not considered as another indicator of water quality in addition to coliform monitoring.

2. Potential for Bacterial Growth

Water in the aircraft system which sits for an extended period of time or is otherwise not turned over could be at risk for biofilm or other bacterial growth, especially if a strong disinfectant residual is not present. Furthermore, total coliform as an indicator may not identify the presence of other organisms that may be present in biofilm such as mycobacterium and *Legionella*. Activities such as routine disinfection and flushing, as well as the presence of a disinfectant residual, may help reduce risk from organisms that are not detected via routine total coliform monitoring.

Most aircraft water tanks are either topped off or drained on an almost daily basis. However, there are occasional situations when the water may sit stagnant. Some examples are aircraft taken out of service for an extended maintenance period, or cold weather conditions that affect the ability to drain tanks (due to environmental concerns involving water disposal in addition to concerns about the drained water freezing on the tarmac). Additionally, aircraft that experience long layovers or overnight stays in high temperature areas have a higher potential for rapid growth of organisms. This proposal does not specifically address such situations; however, EPA requests comment on whether the final rule should include a provision to address extended stagnant periods, high water temperatures or

other situations that may augment concern regarding bacterial growth.

3. Temperature of Sample Taps

This proposal does not specify whether samples should be taken from hot or cold taps. Some concern exists about sampling from hot taps since hot water could kill microorganisms, masking whether there is a microbiological problem in the aircraft system. EPA requests comment on whether sampling should only be limited to cold taps when they are available. EPA also requests comment on whether the temperature of the hot taps should be measured to provide some indication of whether the temperature achieved is high enough to alter the microbiological results.

4. Statistical Sampling

As stated earlier, each aircraft water system is a unique system that draws water from a potentially large number and combination of sources and distribution systems, which may vary on a daily basis, or even more often. This proposal requires corrective action based on monitoring results for each individual system to directly address the risks to that system. Some stakeholders have suggested that a representative number of aircraft be sampled, resulting in a statistical sample of the air carrier fleet instead of all aircraft being sampled. Under current practices, the source(s) of water for an individual aircraft are so varied that it is difficult for a statistical sample to provide an accurate representation of all water being served on the aircraft. In addition, if the Agency did have enough evidence that allowed an extrapolation of the statistical sample to the entire fleet, the implication is that any positive coliform result in the statistical sample would trigger additional monitoring and/or corrective action in the entire fleet, as the statistical sample would be used as an indicator for a systemic problem.

EPA requests comment on the use of statistical sampling methodologies, specifically on what type of monitoring scheme would allow a statistical sample to be representative of the whole. EPA is especially interested in getting input on whether such methodologies, if allowed, should only be used in conjunction with onboard or other supplemental treatment such as adding a disinfectant or ultraviolet light. EPA also requests input regarding the support for such an option, given the cost and logistical implications of a positive result in the statistical sample triggering follow-up action in the entire fleet.

5. Option for Repeat Sampling

Under this proposal, an aircraft water system that has one total coliform-positive result under its routine monitoring sample, but no fecal coliform or E. coli-positive, can opt to either go directly to corrective action (disinfection and flushing) or perform repeat sampling. In some cases, by the time the air carrier is notified that the routine sample results are total coliform-positive it is likely that the original water in the aircraft water system has been changed. Under this scenario, the repeat samples may not be providing an accurate picture of the water quality since it is not characterizing the same water as the routine sample.

EPA requests comment on whether to disallow the option for repeat sampling in response to the original routine total coliform-positive if the aircraft has boarded water since the routine sample.

6. Disinfectant Residual Monitoring

This proposal relies on a combination of coliform bacteria monitoring with routine disinfection and flushing of the aircraft water system to ensure the safety and quality of water onboard aircraft. EPA's SWTR requires public water systems relying on surface water as their water source to maintain a detectable disinfectant residual in the distribution system to ensure that disinfection is maintained throughout the water system. Since aircraft may board water more than once per day from a variety of sources (some of which may be ground water that is not disinfected), EPA is uncertain whether monthly (or less frequent) disinfectant residual monitoring would be adequate to provide useful information for aircraft water systems. Instead, EPA believes that more frequent flushing and disinfection of the entire aircraft water system as a treatment technique combined with other barriers will ensure microbiologically safe tap water is provided on the aircraft in lieu of the residual disinfectant requirements applicable to stationary public water systems. However, EPA is also soliciting comment on an alternative which would add disinfectant residual monitoring to the proposed monitoring requirements.

The microbiological safety of drinking water supplied by public water systems in the United States relies heavily on disinfection of the water. This is especially the case for systems that use surface water as a source of water. Although some microorganisms are resistant to disinfection (e.g., *Cryptosporidium*), maintenance of a disinfection residual throughout the distribution system helps to inactivate many types of microorganisms in the distribution system and controls biofilm growth.

Not all water boarded onto aircraft at airports is necessarily disinfected or has disinfectant residuals. Domestic ground water systems do not necessarily disinfect nor have a disinfectant residual in the distribution system. Even if the water supplied to airports by regulated public water systems have disinfectant residuals at the airport taps, the process of getting the water into aircraft water tanks via water trucks, carts and hoses can provide enough mixing and aeration of the water to volatilize the disinfectant.

As noted above, EPA believes that this proposal adequately addresses concerns about disinfection through the coliform monitoring and disinfection and flushing requirements. However, EPA requests comment on whether it is appropriate to require routine monitoring for disinfectant residuals at aircraft water systems and if so, the frequency at which this monitoring should occur, and what corrective action(s) should be required if sufficient disinfectant residuals are not detected.

7. Time Frame for Disinfection and Flushing

The proposed rule requires disinfection and flushing to be conducted within 72 hours in certain situations, for example after receiving lab results indicating two total-coliform positive samples or a single fecal coliform- or e-coli positive sample (except where the water system is physically shut off). EPA understands that this will generally require bringing the aircraft to a designated maintenance facility equipped to perform disinfection and flushing. EPA requests comment on whether this time frame is appropriate.

C. Aircraft Water System Operations and Maintenance Plan

EPA is proposing to require each air carrier to develop and implement an aircraft water system operations and maintenance plan covering each type of aircraft operated by the air carrier. An effectively implemented plan is essential to ensure that safe and reliable drinking water is provided to aircraft passengers and crew. EPA believes that the most reliable way to ensure effective implementation is to require that the water system operations and maintenance plan be included in a Federal Aviation Administration approved or accepted aircraft operations and maintenance program. The FAA requires all maintenance and

operational procedures to be formally documented for each aircraft. Failure by an air carrier to perform the prescribed program requirements may result in forfeiture of air carrier operating certificates and/or fines. Furthermore, EPA is attempting to minimize duplication of effort between the two agencies in conducting routine oversight and review of water system operations and maintenance plans by requiring the air carriers to include these plans in the FAA approved or accepted operations and maintenance program. However, EPA will provide oversight of operation and maintenance plans through periodic compliance audits.

In order to ensure that the appropriate multiple barriers are in place, each aircraft water system operation and maintenance plan (referred to as the Plan) must include the following components:

• *Watering Point Selection Requirement.* The Plan must ensure that all water boarded within the United States is from an approved FDA watering point as required under 21 CFR 1240.80, and that water boarded outside the United States be in accordance with procedures designed to ensure that it is safe for human consumption. In no event should the air carrier knowingly serve water that violates NPDWRs.

• *Procedures for Disinfection and Flushing of Aircraft Water System.* The Plan must include a description of procedures for disinfection and flushing of aircraft water systems that are conducted in accordance with or are no less stringent than the manufacturer recommendations. Specifically, the frequency of disinfection must be no less than the minimum recommended by the manufacturer, though it may be more frequent. This allows for equipment-specific designs and for flexible implementation with the evolution of technology. Inclusion in the Plan of the specific disinfection frequency, disinfecting agent used, disinfectant concentration, disinfectant contact time, and flushing volume or flushing time allows for consistent implementation of these procedures. EPA understands that some manufacturers do not provide equipment disinfection and flushing recommendations. Where a recommended routine disinfection and flushing frequency is not specified by the aircraft water system manufacturer, the aircraft water system must be disinfected and flushed no less frequently than quarterly.

• *Procedures for Follow-up Sampling.* These must be included in the operation and maintenance plan to ensure consistency in the procedures.

• *Training Requirements.* The Plan must describe training protocols for all staff involved with the operation and maintenance provisions of this proposed regulation and those persons conducting or managing the microbiological requirements of this proposed regulation; all such staff are required to receive training. The NPDWRs require that each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel. It is vital that persons responsible for operating or maintaining aircraft water systems be adequately trained to ensure proper system operation. In order to ensure that persons who maintain aircraft public water systems are competent and efficient, training of qualified air carrier personnel specified in the Plan must include training on at least the following: water boarding procedures, sample collection procedures, disinfection and flushing procedures, and public health and safety reasons for the requirements of this proposed regulation.

• *Self-Inspection Procedures.* The Plan must describe the self-inspections to be conducted and documented by the air carrier (see Section IV.G for a description of self-inspection requirements under this rule). Documentation of the results of such inspection must be made available to EPA during compliance audits.

• *Water Boarding Procedures.* The Plan must ensure that water boarded within the United States is from a watering point approved by FDA, and describe procedures for ensuring that water boarded outside the United States is safe for human consumption. The Plan must also provide a description or a discussion of how the water will be transferred from the approved source to the aircraft. This information will be helpful for ground crews responsible for maintaining the equipment supplying the aircraft with finished water. EPA understands and recognizes that aircraft traveling overseas may board water from sources that are outside the jurisdiction of the United States. EPA is aware that a number of air carriers already have procedures in place to provide assurances on the quality of water boarded from such sources. The proposed rule requires that all carriers have such procedures and that they be documented in the Plan. The Agency is also aware that in limited circumstances, water of unknown quality is occasionally boarded to operate essential systems, such as toilets. When instances such as these occur, passengers and crew must be notified, and disinfection and flushing of the aircraft water system must occur within 72 hours. If water known to be in violation of NPDWRs applicable to TNCWSs must be boarded, the rule imposes the same requirements as for positive coliform detects (restricted access, public notice, and disinfection and flushing with follow-up sampling before unrestricted access is restored). EPA believes this will provide the best method of protection of public health by minimizing the risks of exposure to unknown contaminants. The Plan must also include a statement as to whether the aircraft water system can be physically disconnected/shut off to the crew and passengers.

• *Coliform Sampling Plan.* The aircraft operation and maintenance plan must also include the monitoring plan for coliforms developed by the air carrier for the specific aircraft.

Request for Comment on Operation and Maintenance Plan Requirements

As far as EPA is aware, there are currently no procedures or requirements for recording information regarding where, how much, and when water is boarded. The boarding of water is usually done on an as needed and as requested basis. EPA believes that recording such information could help identify potential hazards from water source(s) in the event of a total coliform-positive sample. Once the potential source(s) are identified, further analysis could be done to determine whether the potential bacteriological contamination originated from the water source(s) or the aircraft water system. However, given the frequency with which aircraft currently board water, this could lead to a large amount of data being recorded, and therefore, EPA is not proposing to require aircraft to record this information. EPA requests comment on whether the potential benefit of recording information on water boarded outweighs the information collection burden. Also, EPA requests comment on whether follow-up sampling should be required to confirm the effectiveness of routine disinfection and flushing, and if so, the frequency at which this monitoring should occur. (As previously noted, the proposed rule already requires follow-up sampling for disinfection and flushing performed as corrective action.)

D. Notification Requirements to Passengers and Crew

A fundamental principle of SDWA is that consumers have a right to know in a timely manner whenever drinking

water violations occur. EPA believes that this includes knowing when situations require that public access to the aircraft water system is restricted. The public also has a right to know when the quality of the water cannot be assured, for example, when water has been boarded from a watering point not approved by FDA or in a manner that does not otherwise comply with the air carrier's procedures for ensuring safe water outside the United States; and about any other situation where the Administrator, air carrier or crew determines that notification is necessary to protect public health.

Due to the nature of violations, or other events that require the restriction of water service, and the transient nature of the population served, air carriers must provide notification to passengers and crew as expeditiously as possible, but no later than 24 hours after being informed of sample results which trigger notification, or within 24 hours of being informed by EPA to perform notification, whichever occurs first. Notification must be in a form and manner reasonably calculated to reach all passengers and crew while onboard the aircraft by using one or more of the following forms of delivery:

- Broadcast over public announcement system on aircraft;
- Posting of the notice in conspicuous locations throughout the area served by the water system. These locations would normally be the galleys and in the lavatories of each aircraft requiring posting;
- Hand delivery of the notice to passengers and crew;
- Another delivery method approved in writing by the Administrator.

The air carrier must continue to provide notification until all follow-up coliform samples are total coliform-negative. Each notice:

- Must be displayed in a conspicuous way when printed or posted;
- Must not contain overly technical language or very small print;
- Must not be formatted in a way that defeats the purpose of the notice;
- Must not contain language that nullifies the purpose of the notice;
- Must contain information in the appropriate language(s) regarding the importance of the notice reflecting a good faith effort to reach the non-English speaking population served, including where appropriate an easily-recognizable symbol for non-potable water.
- When public access to the aircraft water system is restricted the air carrier must provide the following public notification:
- A prominently-displayed, clear statement in each lavatory and galley indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use; and
- A prominent notice in the galley directed at the crew which includes:
  - ○ A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use;
  - ○ A description of the violation or situation triggering the notice, including the contaminant(s) of concern;
  - ○ When the violation or situation occurred;
  - ○ Any potential adverse health effects from the violation or situation;
  - ○ The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water;
  - ○ What the air carrier is doing to correct the violation or situation; and
  - ○ When the air carrier expects to return to compliance or resolve the situation;

If access to the water system by passengers is physically prevented through disconnecting or shutting off the water, or if water is supplied only to lavatory toilets, and not to any lavatory taps, then only the notice to the crew is required. This exception only applies when there is no possibility of the passengers accessing the water system for consumptive use.

Notice when water has been boarded from a watering point not approved by FDA or when required routine monitoring or disinfection and flushing was not conducted must include:

- A prominently-displayed, clear statement in each lavatory indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, or teeth brushing (in this situation, hand washing need not be restricted, given that there is no affirmative indication of a problem with the water and hand washing generally reduces microbial risk); and
- A prominent notice in the galley directed at the crew which includes:
  - ○ A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, or teeth brushing;
  - ○ An indication that water was boarded from a watering point that has not been approved by FDA, or when required monitoring or required disinfection and flushing was not conducted and it is not known whether the water is contaminated;
  - ○ When and where the water was boarded from a watering point that has not been approved by FDA, or when the specific monitoring or disinfection and flushing requirement was not met;
  - ○ Any potential adverse health effects from exposure to waterborne pathogens that might be in the water;
  - ○ The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water; and
  - ○ A statement indicating when the system will be disinfected and flushed and returned to service if known;

EPA is proposing the following standard health effects language for air carriers to use in creating public notices to the crew:

- Health effects language to be used when notice was triggered by an event other than a coliform-positive sample, including where water was boarded from a watering point not approved by FDA:

> Because [required monitoring was not conducted], [required disinfection and flushing was not conducted], [water was boarded from a watering point not approved by FDA], or [other appropriate explanation], we cannot be sure of the quality of the drinking water at this time. However, drinking water contaminated with human pathogens can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems. This water may be used for hand washing, but not for drinking, food or beverage preparation, or teeth brushing.

- Health effects language to be used when more than one routine sample is total coliform-positive and fecal coliform-negative and E. coli-negative, or a repeat sample is total coliform-positive and fecal coliform-negative or E. coli-negative must include the following:

> Coliform are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in [insert number of samples detected] samples collected and this is a warning of potential problems. If human pathogens are present, they can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

- Health effects language to be used when any routine or repeat sample is fecal coliform positive or E. coli positive:

> Fecal coliform and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal

wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

All notification required to be posted or announced must continue until all follow-up coliform samples are total coliform-negative.

E. Reporting Requirements

As for all public water systems, EPA believes it is essential for accountability and regulatory oversight that certain information be reported to EPA by the air carrier. At the same time, EPA believes that the type and amount of information should be carefully tailored to the purpose of reporting it, to avoid duplication, wasted resources, and unnecessary burdens for either industry or EPA. Therefore, the reporting requirements of the proposed rule are designed to capture only information that will be used for compliance and accountability.

For existing aircraft water systems, the air carrier must report to EPA the frequency for routine coliform sampling identified in the coliform sampling plan required for each aircraft public water system and that the air carrier has updated its operations and maintenance plan by six months after the final rule is published. For new aircraft water systems, the air carrier must report to EPA the frequency for routine coliform sampling as identified in the coliform sampling plan for each aircraft and that the air carrier has an approved operations and maintenance plan within the first calendar quarter of initial operation of the aircraft.

In addition, the air carrier must report the following information through electronic means as approved or established by EPA:

- The air carrier must report its complete inventory of aircraft that are PWSs to EPA no later than six months after publication of the final rule in the **Federal Register**. Inventory information includes: (1) The unique aircraft identifier number, (2) the status of the aircraft water system as active or inactive, (3) any water system treatment installed on the aircraft, and (4) whether access to the water system can be physically shut off or disconnected to passengers and crew.
- Changes in aircraft inventory no later than 10 days following the calendar month in which the change occurred. Changes include new aircraft, aircraft that are removed from service, and a change to any of the data items previously listed in (1) through (4) of this section.
- All sampling results no later than 10 calendar days following the monitoring period in which the sampling occurred.
- All events requiring notification of passengers and crew and non-routine disinfection and flushing must be reported within 10 days of the air carrier being informed of sample results. Because the corrective action requirements for aircraft water systems are contained directly in the rule (e.g., restricted access, disinfection and flushing, follow-up sampling), and do not require consultation with the primacy agency, EPA believes it is appropriate to allow a slightly longer time frame for reporting than would be required for land-based public water systems (*i.e.*, generally 24 hours).
- Evidence of self-inspection must be provided to EPA within 90 days of completion, including an indication that any deficiencies identified during the self-inspections have been addressed. Air carriers must also report within 90 days that deficiencies identified during a compliance audit have been addressed. If any deficiency identified during either self-inspection or a compliance audit has not been addressed within 90 days, the carrier must report details of the deficiency, why it has not yet been addressed, and a schedule for addressing it as expeditiously as possible.

Failure to provide this information within a timely manner will result in noncompliance with the rule and may result in an enforcement action, which may include the assessment of penalties.

The air carrier must report to EPA within 10 calendar days the failure to comply with the monitoring or disinfection and flushing requirements of this proposed regulation.

Reporting requirements begin six months after the final rule is published. As the primacy agency, EPA has to oversee reporting by air carriers. To facilitate collection and analysis of aircraft water system data, EPA is developing an internet based electronic data collection and management system. This approach is similar to that used under the EPA SDWIS/STATE (Safe Drinking Water Information System/State version) reporting program. Inventory and analytical results for microbiological testing will be reported directly to this database using web forms and software that can be downloaded free of charge. The data system will perform logic checks on data entered and calculate final results for accountability and regulatory oversight. This is intended to reduce the reporting errors and limit the time involved in investigating, checking, and correcting errors at all levels. Air carriers should instruct their laboratories to either manually enter sample analysis results into an EPA managed web-based data system, or to electronically upload data files from their laboratory information management systems (LIMS) to a web-based data file submission program. These data files must be in a format prescribed by EPA. If an air carrier believes that a result was entered into the data system erroneously, the air carrier may notify the laboratory to rectify the entry. The laboratory must be a state- or EPA-certified laboratory that adheres to the approved quality control procedures for checking analytical data for completeness and correctness. In addition, if an air carrier believes that a result is incorrect, they may submit the result as a contested result and petition EPA to invalidate the sample. If an air carrier contests a sample result, they must submit a rationale to EPA, including a supporting statement from the laboratory, providing a justification. The invalidation of a total coliform sample result can only be made by EPA in accordance with 40 CFR 141.21(c)(1)(i), (ii), or (iii) or by the state- or EPA-certified laboratory in accordance with 40 CFR 141.21 (c)(2). Also, if an air carrier determines that its laboratory does not have the capability to report data electronically, they can submit a request to EPA to use an alternate reporting format.

F. Recordkeeping Requirements

EPA is proposing that air carriers retain certain information for the aircraft that they own or operate. Records to be retained include the following:

- Records of bacteriological analyses must be kept for at least 5 years and must include the following information: date, time and place of sampling, and the name of the person who collected the sample; identification of the sample as a routine, repeat, follow-up or other special purpose sample; date of the analysis; laboratory and person responsible for performing the analysis; the analytical technique/method used; and the results of the analysis.
- Records of any disinfection and flushing must be kept at least 5 years.
- Records of a self inspection must be kept for at least 10 years.
- Sampling plans must be maintained by the air carrier and made available for review by EPA upon request, including during compliance audits.
- Aircraft water system operation and maintenance plans must be maintained

by the air carrier and made available for review by EPA in accordance with FAA requirements; such plans must be available for review by EPA upon request, including during compliance audits.

- Records of notices to passengers and crew issued as required by this proposal must be kept for at least 3 years after issuance.

G. Audit and Self-Inspection Requirements

SDWA sections 1413 and 1451 authorize EPA to approve States and Indian Tribes to be the primary implementation authority for federal drinking water standards; this is known as ''primacy.'' However, EPA regulations provide that State/Tribal primacy programs do not include public water systems on ICCs, such as aircraft (40 CFR 142.3). As a result, EPA remains responsible for implementation, including enforcement, of the ADWR.

EPA may conduct routine compliance audits as deemed necessary in providing regulatory oversight to ensure proper implementation of the requirements in the proposed rule. Compliance audits may include, but are not limited to, the following: bacteriological sampling of aircraft drinking water, reviews and audits of records as they pertain to water system operations and maintenance such as log entries, disinfection and flushing procedures, and sampling results; and observation of procedures involving the handling of finished water, watering point selection, boarding of water, operation, disinfection and flushing, and general maintenance of aircraft water systems.

In addition, instead of the sanitary survey required for other public water systems every 5 years, EPA is proposing that self-inspections be conducted by the air carrier for each aircraft water system no less frequently than once every 5 calendar years. The air carrier must address deficiencies found as a result of routine compliance audits or self-inspections within 90 days of identification of the deficiency or where such deficiency is identified during extended or heavy maintenance before the aircraft is put back into service. EPA notes that the air carrier industry conducts routine inspections for flight safety before each flight. The safety of all flight participants, pilot, flight attendants and passengers, is considered prior to take-off. EPA expects the same level of attention to be exhibited when air carriers conduct self-inspections of their aircraft public water systems. When conducting inspections of their water systems, air carriers should examine, but are not limited to, the storage tank, distribution system, supplemental treatment, fixtures, valves, and backflow prevention devices.

H. Supplemental Treatment

Onboard treatment units are not required for use with finished water but can provide a desirable additional barrier of protection. If used, they must be acceptable to FDA, must meet NSF International / American National Standards Institute (ANSI) Standards, and must be installed, operated, and maintained in accordance with the manufacturer's plans and specifications and approved or accepted by FAA (14 CFR Part 43, 14 CFR Part 91, 14 CFR Part 121). Water treatment and production equipment must produce water that meets the standards prescribed in 40 CFR Part 141.

Request for Comment on Supplemental Treatment

A supplemental treatment protection barrier for water boarded onto aircraft water systems is not required by the proposed rule. However, the proposed rule includes other multiple barriers that ensure the protection of public health. These protection barriers include requirements that boarded water must meet all NPDWRs applicable to TNCWSs, must be obtained from an FDA-approved watering point, and that personnel involved in the water transfer process must receive adequate training on appropriate procedures to maintain water quality and prevent contamination. Furthermore, the proposed rule requires disinfection and flushing of aircraft water systems on a routine basis to ensure tanks and piping on each aircraft are clean. As proposed, the interval for routine disinfection and flushing of the aircraft water system may vary from four times per year (quarterly) to less than once per year based on manufacturer recommendations. Also, the proposed rule establishes compliance monitoring schedules for each aircraft water system at frequencies that increase or decrease in relation to the disinfection and flushing intervals. For example, if an aircraft water system is disinfected and flushed once per quarter, the air carrier is required to sample for microbiological presence annually. On the other hand, if an aircraft water system is disinfected and flushed less than once per year, the air carrier must sample monthly for microbiological presence. If compliance monitoring indicates a potential contamination problem, the proposed rule requires specific actions (e.g., sampling, disinfection and flushing, and notifying the passengers and crew) to be taken to address the problem.

While these barriers are specifically tailored to reduce risk, the possibility exists that microbiological contamination of the aircraft water system may occur. Traditional water systems often rely on maintenance of a distribution system disinfectant residual to help inactivate certain microorganisms and control biofilm growth. In situations where the disinfectant added at the water treatment plant is insufficient to maintain a residual throughout the distribution system, supplemental disinfection within the distribution system may be used to maintain a detectable disinfectant residual. For example, traditional systems frequently supplement or ''boost'' the disinfectant residual level by injecting a chlorine solution into the water in specific areas of a distribution system. However, the distribution system in a traditional water system may be very extensive compared to the very limited distribution system onboard an aircraft. Another critical consideration is that some of the chemical properties of chlorine (e.g., corrosive, volatile, toxic) may be problematic if stored in quantity for supplemental treatment purposes onboard aircraft.

Another option for providing a barrier against microbiological contamination is the use of ultraviolet light (UV) to provide a means of physical disinfection. Interest in using UV light to disinfect drinking water is growing among public water systems due to its ability to inactivate pathogenic microorganisms without forming regulated disinfection byproducts. UV light has also proven effective against some pathogens, such as *Cryptosporidium,* which are resistant to commonly used disinfectants like chlorine. EPA is aware that at least one manufacturer provides UV disinfection systems certified by the FAA to be retrofitted onto passenger aircraft. EPA is interested in obtaining information about this or other treatment system specifications with respect to cost, reliability, operation and maintenance, etc.

EPA requests comment on whether to require supplemental disinfection of water boarded onto aircraft and whether to require monitoring for disinfectant residuals either in addition to or in lieu of supplemental disinfection. EPA is interested in obtaining any other information that should be considered in evaluating this alternative, or if there are other alternatives that would be effective in providing additional safety of aircraft drinking water from

microbiological contamination. In addition, EPA is requesting comment on the feasibility of using other types of supplemental disinfection, such as UV treatment onboard aircraft, including providing incentives such as reduced routine monitoring or routine disinfection and flushing if an air carrier provides supplemental treatment.

I. Violations

For purposes of this proposed rule, the following situations will constitute a violation where an air carrier will be required to provide notification to passengers and crew on the aircraft that triggered the violation:

- Failure to disinfect and flush;
- Failure to monitor for total coliform and where required for fecal coliform/E. coli;
- Failure to take required corrective action;
- Has one or more fecal coliform positive or E. coli positive sample in any monitoring period (routine and repeat samples are used in this determination).

In addition, the following situations will constitute a violation, but does not trigger additional public notification requirements:

- Failure to comply with the proposed rule's public notice requirements;
- Failure to comply with reporting and recordkeeping requirements;
- Failure to conduct a self-inspection or address deficiencies;
- Failure to develop a coliform sampling plan; and develop and include an aircraft water system operations and maintenance plan in an FAA approved or accepted operations and maintenance program,

J. Compliance Date

EPA is proposing that the date for air carriers to comply with the requirements of this rule be six months from the date of promulgation for several reporting and planning requirements and one year from the date of promulgation for the rest of the rule requirements. Section 1412(b)(10) of SDWA directs EPA to establish a date for compliance that is three years after publication unless EPA determines that a shorter compliance date is practicable. EPA believes that the six months and one year timeframes are practicable for several reasons. First, this rule will be directly implemented by EPA so it will not be necessary to allow two years for States to obtain primary enforcement authority to implement the rule. Second, since air carriers were out of compliance with the existing NPDWRs, most have been placed under Administrative Orders on Consent, which have requirements similar to those of the proposed ADWR. Complying with the proposed requirements will not require significant changes in practice from the existing administrative orders. In addition, an earlier compliance date will allow the air carriers to be taken off of the AOCs and be brought into compliance with the NPDWRs sooner. EPA also believes it is practicable for air carriers to implement and report within six months of promulgation of the rule the following: (1) The development of a coliform sampling plan and the selected frequency of coliform sampling, (2) the development of operations and maintenance plans in accordance with the rule and (3) fleet inventory data. None of these three rule provisions require extensive planning or expenditures.

EPA is requesting comment on the compliance dates of the proposed ADWR.

V. Cost Analysis

This section summarizes EPA's estimates of the cost of this proposal, as well as the estimated costs of other regulatory alternatives that were considered but rejected.

A. Summary of Regulatory Alternatives Considered

In developing this proposed rule, EPA evaluated four options: The current regulations and three alternatives, one of which is the proposed rule. For each option, EPA estimated annualized costs and relative risks, and characterized anticipated benefits. The alternatives considered include the following:

(1) Existing Drinking Water Regulations.

(2) Regulatory Requirements Similar to the Air Carrier Administrative Orders on Consent (AOCs).

(3) Water Supply Guidance 29.

(4) Proposed Rule.

The following briefly summarizes the three alternatives plus the proposed rule. For the purposes of each alternative, aircraft are assumed to be boarding finished water. Finished water is defined in 40 CFR 141.2 as water that is introduced into the distribution system of a PWS and is intended for distribution and consumption without further treatment, except treatment necessary to maintain water quality in the distribution system. Prior to boarding the water, compliance with FDA and FAA requirements is expected to ensure that water from the supplier meets NPDWR standards and that the equipment used in transferring this water to the aircraft is maintained and operated so as to preserve that level of water quality.

Alternative 1—Existing Drinking Water Regulations

Alternative 1 assumes that all carriers with aircraft water systems subject to SDWA continue to be subject to the current requirements under the applicable NPDWRs for each aircraft water system. Alternative 1 includes the following regulatory components for compliance with existing NPDWRs:

- Monthly routine monitoring (single sample) for total coliform bacteria (TC);
- Repeat monitoring for TC after an initial TC positive sample;
- Analysis of TC positive culture media for the presence of fecal coliforms or E. coli);
- Additional routine TC samples in the month following a positive routine sample;
- Sanitary surveys conducted every 5 years: Includes an evaluation of the applicable components of a water system (source; treatment; distribution system; finished water storage; pumps, pump facilities, and controls; monitoring, reporting, and data verification; system management and operation; and air carrier compliance with state requirements);
- Monthly disinfection residual monitoring; and
- Public notification for violations.

Alternative 2—Regulatory Requirements Similar to the Air Carrier Administrative Orders on Consent

Alternative 2 describes requirements similar to those negotiated under the Administrative Orders on Consent (AOCs), and with which many air carriers must currently comply as an interim measure until the ADWR is finalized. Alternative 2 includes the following regulatory components:

- All maintenance personnel responsible for the operations and maintenance of aircraft water systems receive training. The training would be implemented by the air carrier responsible for the aircraft.
- Aircraft operations and maintenance plans and monitoring plans must be updated to reflect new schedules, procedures, and activities.
- Air carriers must monitor for total coliforms and disinfectant residual.
- If an aircraft water system tests positive for total coliforms, the TC positive culture medium must be analyzed for fecal coliform or E. coli.
- If an aircraft water system tests positive for fecal coliform or E. coli, or if it tests positive for total coliform in any sample, the air carrier must notify EPA within 24 hours and must conduct

corrective action disinfection and flushing procedures, including follow-up sampling, and must implement public notification activities.

• Copies of operations and maintenance plans, monitoring plans, and monitoring data must be maintained by the air carrier.

• Approximately 25 percent of the aircraft fleet must be monitored for coliforms and disinfectant residual quarterly, so that all aircraft are sampled at least annually.

• Routine disinfection and flushing must be performed at least quarterly.

• A self-certification that affirms that the aircraft water system was disinfected and flushed according to the operations and maintenance plan must be submitted to EPA each quarter.

• Air carriers must report monitoring results quarterly (within 10 business days of the end of a quarter of monitoring).

Alternative 3—Water Supply Guidance 29

Alternative 3 describes the requirements included in Water Supply Guidance 29, which described an alternative to the NPDWRs and was in effect from October 1986 until it was suspended by EPA in September 2003. WSG 29 described the implementation of an operations and maintenance program that included disinfection and flushing the aircraft in lieu of monitoring for those contaminants that pose an acute health threat based on short-term consumption by passengers and crew. These include turbidity, coliform, and nitrate. It is notable that WSG 29 was written prior to promulgation of the Total Coliform Rule, the Surface Water Treatment Rule, or the Phase II Chemical contaminant rule (which included revised requirements for nitrate). Alternative 3 includes the following components:

• Air carriers would comply with either the monitoring and reporting requirements or with their approved operations and maintenance plans.

• Minimum monitoring requirements would include daily turbidity monitoring, quarterly coliform monitoring, and annual nitrate/nitrite monitoring.

• Corrective action of disinfection and flushing the aircraft's water system would be required following a TC positive sample.

• Operations and maintenance requirements include quarterly disinfection and flushing of onboard water systems.

Proposed Rule

The proposed rule represents a hybrid approach that combines what EPA believes are the most practical elements of the other alternatives with flexibility for the air carriers in how they implement the regulatory requirements. This proposed approach allows compliance with regulatory components that are most tailored to the unique circumstances of aircraft drinking water systems and the operational needs of each air carrier. Key components of the proposal include the following:

• Routine disinfection and flushing of the aircraft water system based on manufacturer recommendations.

• Routine coliform monitoring using one of three monitoring frequency options determined by the frequency of disinfection and flushing of the aircraft water system.

• Two routine coliform samples collected at the frequency chosen, one sample from a lavatory and one sample from a galley. If one routine sample is total coliform-positive the air carrier chooses to either perform repeat sampling (collecting 4 samples) or conduct corrective action, which includes disinfection and flushing of the water system and follow-up monitoring.

• In the event of a fecal coliform/E. coli-positive sample or more than one total coliform-positive sample, corrective action disinfection and flushing is performed, access to water is restricted, and public notice is to be posted and/or announced until the water system is disinfected and flushed and all follow-up samples are total coliform-negative.

• Disinfectant residual monitoring is not required but is recommended as a means of indicating water quality and prompting voluntary corrective measures such as flushing and refilling the tank with water containing a residual.

• Specific training requirements of maintenance personnel are included in the aircraft operations and maintenance plan.

• Specific requirements for disinfection and flushing procedures are included in the aircraft operations and maintenance plans.

• Monitoring results and compliance status are reported to EPA.

• Water system operations and maintenance plans are incorporated into FAA approved/accepted aircraft operations and maintenance programs.

• EPA performs compliance audits as needed.

• Carriers perform self-inspections of the each aircraft water system every 5 years and certify completion of the self-inspections.

B. National Cost Estimates

EPA estimates that the annualized cost to the air carriers of carrying out the activities required in this proposed rule is $7.86 million at a 3 percent discount rate and $7.96 million at a 7 percent discount rate. EPA compares the costs of the regulatory alternatives in the next section. Also, Table V–2 presents total annualized present value costs by alternative. Because EPA is the primacy agency for aircraft water systems, EPA's costs to implement the proposed requirements have also been estimated. Table V–1 presents the total annualized costs to air carriers (airlines) and EPA for the proposed ADWR preferred alternative at 3 and 7 percent discount rates.

TABLE V–1.—TOTAL ANNUALIZED PRESENT VALUE COSTS FOR THE PROPOSED ADWR

[$Millions, 2006$]

	Air carriers	Agency	Total	Air carriers	Agency	Total
	3%			7%		
Implementation	$0.002	$0.01	$0.01	$0.003	$0.01	$0.01
Annual Administration	.....	0.25	0.25	.....	0.25	0.25
Sampling Plan	0.002	0.001	0.003	0.003	0.001	0.004
O&M Plan	0.01	0.000	0.01	0.02	0.000	0.02
Coliform Monitoring	5.32	0.04	5.36	5.39	0.04	5.43
Routine Disinfection and Flushing	2.37	.....	2.37	2.40	.....	2.40
Corrective Action Disinfection and Flushing	0.14	.....	0.14	0.14	.....	0.14
Compliance Audit	0.01	0.01	0.02	0.01	0.01	0.02

TABLE V–1.—TOTAL ANNUALIZED PRESENT VALUE COSTS FOR THE PROPOSED ADWR—Continued

[$Millions, 2006$]

	Air carriers	Agency	Total	Air carriers	Agency	Total
	3%			7%		
Total	7.86	0.30	8.16	7.96	0.31	8.27

C. Comparison of Cost of Regulatory Alternatives

Table V–2 provides a summary of the annualized present value costs for each regulatory alternative considered during the regulatory development process at 3 and 7 percent discount rates. EPA used the same process for developing cost estimates for all regulatory alternatives as was done for the proposed option. Unit costs were multiplied by the number of air carriers or aircraft performing various components of each alternative, and results were summed for all components.

Relative to the regulatory requirements currently in the *Code of Federal Regulations* (Alternative 1), the proposed rule (Alternative 4) represents a significant reduction in cost. The estimated total annualized present value cost of $8.16–$8.27 million for the proposed rule is only about one-fourth of the estimated cost of Alternative 1, as a result of tailoring the current regulations to the specific operational characteristics of aircraft drinking water systems. Relative to the Administrative Orders on Consent (Alternative 2), which is the current practice of aircraft water systems, the proposed rule represents a slight increase. However, the proposed rule offers operational advantages over the other alternatives including the slightly less costly, but more prescriptive, Alternative 2. EPA specifically designed the proposed rule to allow air carriers to follow the manufacturer recommendations for disinfecting and flushing aircraft water systems, instead of prescribing the frequency, chemical type and concentration to be used, which is the case in Alternative 2. The less prescriptive approach of the proposed rule addresses valuable stakeholder input, which recommended that EPA utilize the technical recommendations of the water system manufacturer rather than prescribe disinfection and flushing procedures that may not be appropriate for all aircraft water systems and may even be detrimental. Another advantage of the proposed rule over the approach used in Alternative 2 is that by utilizing the manufacturer recommendations for disinfection and flushing, the rule requirements will automatically evolve (another stakeholder recommendation) with technological improvements in aircraft water tank lining and piping materials and as new more effective disinfectants are developed.

In addition to operational advantages, the less prescriptive approach taken by the proposed rule may translate into a lower cost than is reflected in Table V–2. First, the proposed rule allows air carriers to perform the disinfection and flushing of aircraft water systems on schedules that are based on (or more frequent than) the manufacturer recommended maintenance frequencies and are included in their FAA-approved or accepted operation and maintenance programs. To provide this flexibility, EPA designed the monitoring schedules for aircraft water systems around the manufacturer recommended disinfection and flushing frequencies. EPA believes this approach is less disruptive to airline operations, which reduces the overall cost of the proposed rule by some unquantified amount.

Under the proposed rule, the more frequently the aircraft water system is cleaned, the less monitoring is required. In estimating the cost of the proposed rule in Table V–2, EPA assumed for simplicity that 45% of the aircraft water systems would follow a schedule of quarterly disinfection and flushing and annual fleet monitoring, which is the same schedule as prescribed in Alternative 2. If more than 45% of the aircraft water systems covered by the proposed rule choose this frequency, then any difference in cost between the proposed rule and Alternative 2 will be reduced or possibly eliminated.

TABLE V—2.—TOTAL ANNUALIZED PRESENT VALUE COSTS, BY ALTERNATIVE

[$Millions, 2006$]

	Alt 1	Alt 2	Alt 3	Alt 4	Alt 1	Alt 2	Alt 3	Alt 4
	3%				7%			
Implementation	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Annual Administration	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
Monitoring Plan	0.003	0.003	0.001	0.003	0.004	0.004	0.002	0.004
O&M Plan	.....	.....	0.01	0.01	.....	.....	0.01	0.02
Coliform Monitoring	26.53	1.68	2.29	5.36	26.85	1.70	2.31	5.43
Disinfectant Residual Monitoring	3.65	0.75	.....	.....	3.69	0.76	.....	.....
Routine Disinfection and Flushing	.....	4.98	3.39	2.37	.....	5.04	3.43	2.40
Corrective Action Disinfection and Flushing	.....	0.05	0.05	0.14	.....	0.05	0.05	0.14
Sanitary Survey/Compliance Audit	0.72	.....	.....	0.02	0.73	.....	.....	0.02
Turbidity Monitoring	.....	.....	15.01	.....	.....	.....	15.19	.....
Total	31.16	7.72	21.00	8.16	31.54	7.82	21.26	8.27

D. Estimated Impacts of Proposed Rule to Air Carrier Passengers

EPA assumes that air carriers will pass on some or all of the costs of a new regulation to their passengers in the form of ticket price increases. EPA estimates that 708.4 million passengers travel each year on aircraft that are affected by the ADWR. The cost passed on to passengers can be roughly estimated by dividing the air carriers' annualized costs incurred by the number of passengers traveling each year. Based on this approximation, EPA estimates that passengers could face a relatively negligible increase of about one cent per ticket.

E. Non-quantified Costs and Uncertainties

1. Non-quantified Costs

Although EPA has estimated the majority of costs of the proposed ADWR, there are some costs that EPA was not able to quantify, such as:

- Air carrier costs for service interruptions due to unanticipated aircraft maintenance needs;
- Passenger costs due to flight cancellations or delays related to aircraft maintenance;
- Air carrier costs to provide bottled water due to lack of onboard tap water during a coliform violation;
- Air carrier customer service response to customer concerns following notification to passengers and crew.

EPA believes that the most significant non-quantified cost is the cost associated with the disruption to air carriers' flight schedules caused by monitoring and maintenance requirements. Table V–3 presents the estimated number of monitoring and disinfection and flushing events per year for all regulatory alternatives. Some fraction of these could cause disruption to air carrier schedules.

TABLE V–3.—SUMMARY OF MONITORING AND DISINFECTION/FLUSHING EVENTS FOR ALL ALTERNATIVES

Rule Alternative	Monitoring			Disinfection and Flushing		
	Routing monitoring coliform sampling events/year	Disinfectant residual monitoring sampling events/year	Total number of sampling events/year	Routine disinfection and flushing events/year	Corrective action disinfection and flushing events/year	Total number of disinfection and flushing events/year
	A	B	C = A + B	D	E	F = D + E
Alt 1	46,248	46,248	92,496	.....	.....	.....
Alt 2	7,708	7,708	15,416	29,308	454	29,762
Alt 3	7,708	.....	7,708	29,308	454	29,762
Alt 4	26,593	.....	26,593	20,516	1,175	21,691

Of the alternatives that require disinfection and flushing, the proposed rule has the least estimated number of disinfection and flushing events/year (21,691), and Alternative 2 and 3 have fewer estimated monitoring events than the proposed rule. EPA does not have sufficient data to quantify the number of events that would actually cause disruption to air carriers and the costs of such disruptions. However, EPA believes that the number of actual disruptions would be lower for the proposed rule compared to Alternatives 1–3 due to the flexibility offered to air carriers in choosing monitoring frequencies under the proposal. EPA assumes that the increased flexibility of the proposal would allow air carriers to schedule routine monitoring and disinfection and flushing to coincide with existing routine maintenance checks. This would in turn decrease potential disruption to air carrier flight schedules and thus decrease air carrier burden and cost for complying with the proposed ADWR monitoring and disinfection and flushing requirements. Therefore, if disruption costs were included in the quantified costs of the rule, the costs for the proposed rule option would likely decrease with respect to the other Alternatives.

2. Uncertainties in Cost Estimates

Many factors contribute to uncertainty in the national cost estimates including:

- Percent of aircraft that will be subject to each coliform monitoring option.
- Expected results from total coliform monitoring.
- Estimated time for air carrier management to read, understand, and decide how to best comply with the ADWR; and develop training, train staff, and oversee compliance.

For simplicity, EPA assumed for this analysis that all air carriers subject to the proposed ADWR would spend equal management time on ADWR requirements, regardless of fleet size or aircraft type. Assuming equal burden for all air carriers to comply with these proposed rule management and oversight requirements could result in an over- or under-estimate of the costs presented.

In developing costs for air carriers to comply with the proposed self-inspection requirements, EPA assumed that with the exception of reporting and recordkeeping burden, no additional costs for self-inspections are incurred by air carriers. Labor burden for self-inspections, which involve a thorough review and inspection of an aircraft water system, is already captured under current FAA requirements and therefore is not included in the cost estimate for this rule. This assumption potentially underestimates air carrier labor burden for self-inspections where deficiencies noted during self-inspections are not addressed during routine aircraft maintenance procedures.

VI. Relative Risk Analysis and Benefits

This section summarizes the risk (and benefit) tradeoffs between compliance with existing NPDWRs (baseline conditions) and the alternatives considered during the regulatory development process. Evaluations include a qualitative analysis that compares the risks for each regulatory alternative as compared to baseline conditions. The qualitative analysis uses the collective professional judgment of an EPA team that included scientists and engineers and representatives of FDA and FAA, not quantitative data, to establish a relative risk rating for each regulatory component. Potential benefits of compliance with the regulatory alternatives are also discussed. It is important to note that these analyses are only for comparing the alternatives relative to one another. EPA did not conduct a risk assessment, and the analyses are not intended to provide any insights into either the nature or the

magnitude of possible public health risks that are associated with the consumption of drinking water on aircraft, or with the expected reductions in those public health risks anticipated from implementation of this rule.

A. Relative Risks—Qualitative Analysis

The goal of the ADWR is to tailor existing NPDWRs to the unique characteristics of aircraft water systems. Because the requisite data on contaminant occurrence (both frequency and concentration), health effects, and water consumption are not available to support a quantitative analysis, EPA estimated the relative risks of the regulatory options considered for the proposed ADWR. The existing NPDWRs that apply to transient noncommunity water systems using purchased finished surface water were used as the baseline for comparison. The overall change in risks from each alternative relative to the Alternative 1 baseline are a result of the complex interaction of all regulatory components. EPA used best professional judgment to qualitatively estimate the relative risk of each regulatory alternative. This assessment was made with contributions from a range of experts, including public health scientists, engineers, administrators, and regulatory experts. The consensus opinions resulting from the qualitative assessment of risks for each alternative relative to the Alternative 1 baseline are presented here.

Alternative 2

Regulatory Alternative 2 mirrors the requirements set forth in the AOCs. In consideration of the regulatory components, the expert consensus is that the dominant factor affecting risk is the periodic disinfection and flushing of aircraft water systems. This type of periodic maintenance is important in an operating environment that is as variable as that of aircraft water systems. Though there is currently no data on how large the marginal effect of increasing disinfection and flushing frequency is, any increase in periodicity for this activity is expected to yield larger health risk reductions in comparison to other regulatory components such as periodic monitoring.

Based on all the considerations discussed above, the expert consensus is that the overall health risk remaining after Alternative 2 is most likely less than the baseline.

Alternative 3

The regulatory components of Alternative 3 are generally not as comprehensive as Alternative 2, yet are similar for those components that are included in both. In particular, the disinfection and flushing requirements are the same for a subset of aircraft in Alternative 3 (i.e., those that choose to comply with an O&M plan in lieu of monitoring). Based on the similarities between Alternatives 2 and 3, the same process and rationale was used to evaluate the two alternatives. Thus, the expert consensus is similar: the overall health risk posed by Alternative 3 is most likely less than the Alternative 1 baseline, though the magnitude of the difference is expected to be smaller compared to Alternative 2 due to the flexibility in choosing between monitoring and an O&M plan.

The Proposed Rule

The regulatory components of the proposed rule allow greater flexibility than Alternatives 2 and 3 with regard to disinfection and flushing. Thus, some aircraft will not perform disinfection and flushing as often as required under those alternatives. However, this is compensated for by requiring more routine monitoring in those situations. As a result, the expert consensus is that the overall health risk posed by the proposed rule is most likely less than the Alternative 1 baseline, and about the same as Alternative 2.

B. Assessment of Potential Quantitative Relative Risk Analyses

In addition to the qualitative relative risk analysis presented in section VI.A, EPA has considered analyses for incorporating quantitative data into a relative risk analysis. However, EPA is limited by the purpose, quality, and quantity of data available in developing meaningful analyses. Any comparison of risk between the Alternatives considered for the proposed rule requires robust data that would support: (1) Direct comparisons of the overall baseline conditions with the overall conditions under each of the Alternatives, or (2) comparisons of specific regulatory components (i.e., disinfection and flushing frequencies) that could be used to compare the baseline and all Alternatives. As of the time of proposal, only limited baseline data and partial data collected under the AOCs are available for analysis. Therefore, EPA has determined that it is not feasible to perform a quantitative relative risk analysis at this time. As additional AOC data are received, EPA will continue to assess the data and evaluate whether additional quantitative analyses are possible and can be used to inform the final ADWR. If EPA determines that additional quantitative analyses are feasible, we will provide the public with an opportunity to review the data prior to finalizing the ADWR.

C. Non-Quantified Benefits

Routine disinfection and flushing required under the proposed rule is expected to remove pathogens that may be living in biofilm in the aircraft distribution system and contributing to endemic disease. Disinfection and flushing associated with corrective action is also expected to inactivate or remove any pathogens that may have entered the distribution system, resulting in decreased chance of illness. By reducing the potential for illness contracted through exposure to aircraft drinking water, EPA expects that the implementation of the proposed rule will reduce the occurrence of illness passed through secondary spread. Furthermore, EPA expects the additional barriers to pathogens required under the proposed rule, disinfection and flushing combined with monitoring and air carrier training requirements, will reduce the likelihood of outbreaks associated with aircraft drinking water.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866, (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' since it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et. seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2279.01

EPA requires comprehensive and current information on total coliform monitoring and associated corrective action activities to implement its program oversight and enforcement responsibilities mandated by the Safe Drinking Water Act (SDWA). EPA will use the information collected as a result of this proposed Aircraft Drinking Water Rule (ADWR) to support the

responsibilities outlined in SDWA by strengthening the implementation of the proposed ADWR in the areas of monitoring and flushing and disinfecting, best management practices, and public notification, while decreasing the risk to public health. The rule requirements described in section IV of this notice are intended to improve the implementation from that of the Total Coliform Rule (TCR) by tailoring the proposed ADWR to fit the unique challenges in the maintenance and operation practices of air carriers, and do not alter the original maximum contaminant level goals or the fundamental approach to controlling total coliform in drinking water.

Section 1401(1)(D) of SDWA requires that there must be ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, * * *'' Furthermore, section 1445(a)(1) of SDWA requires that every person who is a supplier of water ''shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations * * * in determining whether such person has acted or is acting in compliance'' with this title. Section 1412(b) of SDWA, as amended in 1996, requires the EPA to publish maximum contaminant level goals and promulgate NPDWRs for contaminants that may have an adverse effect on the health of persons, are known to or anticipated to occur in public water systems, and, in the opinion of the Administrator, present an opportunity for health risk reduction. The NPDWRs specify maximum contaminant levels or treatment techniques for drinking water contaminants (42 U.S.C. 300g–1). Section 1412(b)(9) requires that EPA, no less than every 6 years, review and if appropriate, revise existing drinking water standards. Currently, the Total Coliform Rule, which established the regulatory standards (i.e., maximum contaminant level goals and treatment techniques) by which this proposed ADWR is based, is being revised in accordance with the finding of the EPA's first Six-Year Review (68 FR 42907, July 18, 2003). Promulgation of the ADWR complies with these statutory requirements.

Burden Estimate

The universe of respondents for this Information Collection Request (ICR) is comprised of 63 air carriers that operate approximately 7,327 aircraft public water systems, classified as Transient Non-Community Water Systems and the ten EPA Regions. The burden per response for air carriers is about 0.3 hours with a cost per response of approximately $31. The average annual burden per air carrier respondent is 535 hours or about 5 hours per aircraft. The average annual cost per air carrier respondent is $61,968 or $534 per aircraft. The total burden incurred by air carriers during the 3-year period covered by this ICR is 101,155 hours which equates to about 1606 hours per air carrier and 14 hours per aircraft. The total estimated capital and start-up costs (including operation and maintenance) for the ICR are estimated to be $7,809,188.

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. When this ICR is approved by OMB, the EPA will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

To comment on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA–HQ–OW–2005–0025. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 9, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by May 9, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

The RFA provides default definitions for each type of small entity. Small entities are defined under the RFA as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy. For purposes of assessing the impacts of drinking water regulations on small entities under the RFA, EPA has defined small entities as public water systems serving 10,000 or fewer persons (see EPA's Consumer Confidence Reports regulation, 63 FR 44511, August 19, 1998).

However, for purposes of assessing the economic impacts of this proposed rule on small entities, EPA is proposing to define ''small entity'' using the SBA

standard as air carriers (NAICS codes 481111 and 481211) having fewer than 1,500 employees (13 CFR 121.201) rather than using the definition EPA has used for small stationary public water systems (''a public water system that serves 10,000 or fewer people''). As discussed in section II.B, many of the requirements under the existing NPDWR have proven difficult to implement when applied to mobile aircraft water systems that are operationally very different from traditional water systems. Under the proposed ADWR, the air carrier is the business entity rather than the individual aircraft water system. Therefore, EPA is proposing to use the SBA standard based on the number of air carrier employees instead of population served by each aircraft water system. The Agency is interested in receiving comments on the use of this alternative definition of small entity.

In addition, the Agency has consulted with the SBA Chief Counsel for Advocacy on using the SBA small business definition of fewer than 1500 employees for purposes of assessing the economic impacts of this rule on small entities. As a result of this consultation, SBA agrees with the Agency's approach to the small entity definition for air carriers for this proposed rule. However, SBA did request that EPA verify that they have captured the entire universe of small entities that may be impacted by the proposed rule. SBA recommended that EPA contact two additional aviation and air transportation associations to determine whether there may be additional entities that may experience a significant economic impact as a result of this proposed rule, which were not accounted for in the Agency's earlier analysis. EPA contacted those associations and they confirmed the Agency's earlier findings from other sources, including the FAA, that EPA had taken into account all available information on the universe of small entities during the Agency's earlier analysis.

EPA also is proposing to use this alternative definition of ''small entity'' for purposes of its regulatory flexibility assessments under the RFA for this rule, revisions to this rule, and any future drinking water regulations that address air carriers.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that the following businesses would be affected by the proposed Aircraft Drinking Water Rule: scheduled passenger air transportation (NAICS 481111) and nonscheduled chartered passenger air transportation (481211). Of the 63 air carriers estimated to be affected by this rule, 30 are small businesses; however, this represents less than one percent of total service to the U.S. population. We have determined that 1 small business air carrier could experience an impact of 1.4 percent of its average annual revenue. This represents 3.3 percent of all small air carriers.

Although this proposed rule will not impact a substantial number of small entities, we continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to 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 proposed regulatory 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. Annual costs to air carriers include the costs of administration, monitoring, corrective action, self-inspection and compliance audits. EPA estimates the annualized compliance cost to air carriers of $7.9 million (3 percent discount rate) and $8.0 million (7 percent discount rate). States, local, and Tribal governments, however, will not incur annual costs associated with this proposed rule, since oversight of air carriers (i.e., interstate commerce carriers) is directly implemented by EPA and EPA will incur costs associated with this rulemaking. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. For these reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. States are not directly affected by any requirements in this rule, since oversight of air carriers (i.e., interstate commerce carriers) is implemented by EPA. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on those communities. The provisions of this proposed rule apply to all aircraft transient non-community water systems. At present, EPA has not identified any Tribal governments that may be owners/air carriers of such systems. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health 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 an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action can have an effect on children. This proposed rule does not change the core Total Coliform Rule requirements in place to assure the protection of children from the effects of contaminants in drinking water. Rather this proposed rule, which is tailored to meet the specific challenges in the maintenance and operations of aircraft water systems, will improve the implementation of the current provisions under the Total Coliform Rule for aircraft water systems, and thereby, is expected to ensure and enhance more effective protection of public health, including the health of children who are aircraft passengers.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule addresses the unique implementation challenges facing aircraft water systems.

This proposed rule does not affect the supply of energy as it does not regulate power generation. The proposed rule does not regulate any aspect of energy distribution as the aircraft covered by the proposed ADWR already have their own power source. Finally, these regulatory revisions do not adversely affect the use of energy as EPA does not anticipate that a significant number of air carriers will add treatment technologies that use electrical power to comply with these regulatory revisions. As such, EPA does not anticipate that this proposed rule will adversely affect the use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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.

The proposed rule may involve voluntary consensus standards in that it would require monitoring for total coliform, and monitoring and sample analysis methodologies are often based on voluntary consensus standards. However, the proposed rule does not change any methodological requirements for monitoring or sample analysis as are indicated in the Total Coliform Rule; only, in some cases, the required frequency and number of samples. Also, EPA's approved monitoring and sampling protocols generally include voluntary consensus standards developed by agencies such as the American National Standards Institute (ANSI) and other such bodies wherever EPA deems these methodologies appropriate for compliance monitoring.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

K. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with sections 1412(d) and 1412(e) of the Safe Drinking Water Act (SDWA), the Agency consulted with the National Drinking Water Advisory Council (NDWAC or the Council); the Secretary of Health and Human Services; and requested a consultation with the Science Advisory Board, which will take place in 2008.

The Agency consulted with NDWAC during the Council's May 25–27, 2007, semi-annual meeting. In general, NDWAC recommended that EPA consider and request public comment on best management practices (BMPs) and public notification requirements, which may be feasible alternatives for

the air carrier industry while providing greater public health protection. EPA has incorporated these recommendations into the proposed ADWR by providing flexible BMP alternatives and timely notification requirements which have been tailored specifically to meet the unique operational characteristics of aircraft public water systems and the air carrier industry. EPA has expressly requested public comment in these areas of the proposed ADWR.

On August 8, 2007, EPA consulted with the Department of Health and Human Services (HHS). EPA received a favorable response to the Agency's novel approach and development of the proposed ADWR and no issues were raised as a result of the consultation.

L. Plain Language

Executive Order 12866 encourages Federal agencies to write rules in plain language. EPA invites comments on how to make this proposed rule easier to understand. For example: Has EPA organized the material to suit commenters' needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that is not clear? Would a different format (*e.g.*, grouping and ordering of sections, use of headings, paragraphs) make the rule easier to understand? Could EPA improve clarity by adding tables, lists, or diagrams? What else could EPA do to make the rule easier to understand?

VIII. References

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WHO. 1997. HACCP—Introducing the Hazard Analysis and Critical Control Point System. Geneva, Switzerland: WHO.

WHO. 2004. Guidelines for Drinking-Water Quality. 3rd Edition, Volume 1—Recommendations, Chapter 4 Water Supply Plans. Geneva, Switzerland: WHO.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 28, 2008.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Part 141 is amended by adding a new subpart X to read as follows:

Subpart X—Aircraft Drinking Water Rule

Sec.

141.800 Applicability and compliance date.
141.801 Definitions.
141.802 Coliform sampling plan.
141.803 Coliform sampling.
141.804 Aircraft water system operations and maintenance plan.
141.805 Notification of passengers and crew.
141.806 Reporting requirements.
141.807 Recordkeeping requirements.
141.808 Audits and inspections.
141.809 Supplemental treatment.
141.810 Violations.

Subpart X —Aircraft Drinking Water Rule

§ 141.800 Applicability and compliance date.

The requirements of this subpart constitute the National Primary Drinking Water Regulations for aircraft that are public water systems, which board only finished water for human consumption. To the extent there is a conflict between the requirements in this subpart and the regulatory requirements established elsewhere in this part, this subpart governs. Compliance Date. Aircraft public water systems must comply, unless otherwise noted, with the requirements of this subpart beginning [DATE 12 MONTHS AFTER FINAL RULE IS PUBLISHED IN THE **Federal Register**].

§ 141.801 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the United States Environmental Protection Agency or his authorized representative.

Air carrier means a person who undertakes directly by lease, or other arrangement, to engage in air transportation. The air carrier is responsible for ensuring all of the aircraft it owns or operates that are public water systems comply with all provisions of this subpart.

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft water system means an aircraft that qualifies as a public water system under the Safe Drinking Water Act and the National Primary Drinking Water Regulations. The components of an aircraft water system include the water service panel, the filler neck of the aircraft finished water storage tank, and all finished water storage tanks, piping, treatment equipment, and plumbing fixtures within the aircraft that supply water to passengers or crew.

Aircraft water system operation and maintenance plan means the schedules and procedures for operating, monitoring, and maintaining an aircraft water system that is included in an aircraft operation and maintenance program approved or accepted by the Federal Aviation Administration. (14 CFR Part 43, 14 CFR Part 91, 14 CFR Part 121).

Finished water means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., supplemental disinfection, addition of

corrosion control chemicals). (40 CFR 141.2). *Human consumption* means drinking, bathing, showering, hand washing, teeth brushing food preparation, dishwashing, and maintaining oral hygiene.

Self inspection means an onsite review of the aircraft water system, including the water service panel, the filler neck of the aircraft finished water storage tank; all finished water storage tanks, piping, treatment equipment, and plumbing fixtures; and a review of the aircraft operations, maintenance, monitoring, and recordkeeping for the purpose of evaluating the adequacy of such water system components and practices for providing safe drinking water to passengers and crew.

Watering point means a facility where finished water is transferred from a water supply to the aircraft. These facilities may include water trucks, carts, cabinets, and hoses.

§ 141.802 Coliform sampling plan.

(a) Each air carrier under this subpart must develop a coliform sampling plan covering each aircraft water system owned or operated by the air carrier that identifies the following:

(1) Coliform sample collection procedures.

(2) Sample tap location(s) representative of the aircraft water system per § 141.803(b)(2) and (b)(3).

(3) Frequency and number of routine coliform samples to be collected.

(4) Frequency of routine disinfection and flushing as specified in the operation and maintenance plan under § 141.804.

(5) Procedures for communicating sample results promptly so that any required actions including repeat and follow-up sampling, corrective action, and notification of passengers and crew may be conducted in a timely manner.

(b) Aircraft with a water system meeting the definition of a PWS, must be covered by a coliform sampling plan by [DATE 6 MONTHS AFTER FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(c) The coliform sampling plan must be included in the Aircraft Water System Operation and Maintenance Plan required in § 141.804.

§ 141.803 Coliform sampling.

(a) *Analytical Methods.* (1) Coliform sampling of aircraft public water systems under this section need only determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(2) EPA approved analytical methodologies must be used for the analysis of coliform bacteria. The invalidation of a total coliform sample result can only be made by the Administrator in accordance with § 141.21(c)(1)(i), (ii), or (iii) or by the State or EPA certified laboratory in accordance with § 141.21(c)(2).

(b) *Routine Monitoring.* For each aircraft water system, the air carrier must collect two 100 mL total coliform routine samples at the frequency specified in the sampling plan in § 141.802. The sampling frequency must be determined by the disinfection and flushing frequency recommended by the aircraft water system manufacturer and as identified in the operation and maintenance plan in § 141.804.

(1) Routine monitoring frequencies must be as follows:

(i) If the aircraft water system is disinfected and flushed at least quarterly, then coliform monitoring must occur at least annually, or

(ii) If the aircraft water system is disinfected and flushed one to three times per year, then coliform monitoring must occur at least quarterly, or

(iii) If the aircraft water system is disinfected and flushed less than once per year, then coliform monitoring must occur at least monthly.

(2) One sample must be taken from a lavatory and one sample from a galley; each must be analyzed for total coliform.

(3) If only one water tap is located in the aircraft water system due to aircraft model type and construction, then a single tap may be used to collect two separate 100 mL samples.

(4) If any routine coliform sample is total coliform-positive, the air carrier must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for E. coli in lieu of fecal coliforms.

(5) Routine coliform samples must not be collected within 72 hours after completing disinfection and flushing procedures.

(c) *Coliform Sample Results.* (1) Negative Routine Coliform Sample Results. If no routine sample is total coliform-positive, then the air carrier must maintain the routine monitoring frequency for total coliform as specified in paragraph (b) of this section.

(2) Single Routine Total Coliform-Positive Sample Result that is Fecal/E. coli-negative. In response to a single routine total coliform-positive sample result that is fecal/E. coli negative, the air carrier must perform at least one of the following:

(i) *Disinfection and Flushing.* In accordance with § 141.804, initiate disinfection and flushing of the system no later than 72 hours after the laboratory notifies the air carrier of the total coliform-positive result. After disinfection and flushing are completed, the air carrier must collect follow-up samples in accordance with paragraph (d) of this section.

(ii) *Repeat Sampling.* Collect four 100 mL repeat samples no later than 24 hours after the laboratory notifies the air carrier of the total coliform-positive result. Repeat samples must be collected and analyzed from four taps within the aircraft as follows: the tap which resulted in the total coliform-positive sample, one other lavatory tap, one other galley tap, and one other tap; if less than four taps exist, then a total of four 100 mL samples must be collected and analyzed from the available taps within the aircraft water system. If no repeat sample is total coliform-positive, then the aircraft water system must maintain the routine monitoring frequency for coliform as specified in paragraph (b) of this section. If any repeat coliform sample is total coliform-positive, the aircraft water system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the air carrier may test for E. coli in lieu of fecal coliforms.

(3) If any routine or repeat sample is fecal coliform-positive or E. coli-positive, then the air carrier must perform all of the following:

(i) Restrict public access to the aircraft water system in accordance with paragraph (c)(5) of this section as expeditiously as possible, but in no case later than 24 hours after being notified of the positive result by the laboratory;

(ii) Conduct disinfection and flushing pursuant to § 141.804 prior to resumption of unrestricted public access to the aircraft water system, or no later than 72 hours if the aircraft water system cannot be physically disconnected/shut off to the crew and passengers as stated in § 141.804(b)(8); and

(iii) Collect follow-up samples pursuant to paragraph (d) of this section.

(4) If more than one routine sample or any repeat sample is total coliform-positive and fecal coliform-negative (or E. coli-negative), then the air carrier must perform all of the following:

(i) Restrict public access to the aircraft water system in accordance with paragraph (c)(5) of this section as expeditiously as possible, but in no case later than 24 hours after being notified of the positive result by the laboratory;

(ii) Conduct disinfection and flushing pursuant to § 141.804 prior to resumption of unrestricted public access to the aircraft water system, or no later

than 72 hours if the aircraft water system cannot be physically disconnected/shut off to the crew and passengers as stated in § 141.804(b)(8); and

(iii) Collect follow-up samples pursuant to paragraph (d) of this section.

(5) Restriction of public access includes, but need not be limited to, the following:

(i) Physically disconnecting or shutting off the aircraft water system where feasible;

(ii) Providing public notification to passengers and crew in accordance with § 141.805; and

(iii) Providing alternatives to use of the aircraft water system, such as bottled water for drinking and coffee preparation; antiseptic alcohol based hand gels or wipes in the galley and lavatories, and other feasible measures that reduce or eliminate the need to use the aircraft water system during the limited period before public use of the aircraft water system is restored.

(d) *Post Disinfection and Flushing Follow-up Sampling.* Following a coliform-positive that requires disinfection and flushing, air carriers must comply with post disinfection and flushing follow-up sampling procedures that, at a minimum, consist of the following:

(1) For each aircraft water system, the air carrier must collect coliform follow-up samples consisting of two 100 mL total coliform samples at the same routine sample locations as identified in paragraphs (b)(2) and (3) of this section.

(2) If one or more of the follow-up samples is total coliform-positive then, as a minimum, the air carrier must re-disinfect and flush the aircraft water system in accordance with § 141.804(b)(2) and take additional follow-up samples in accordance with paragraph (d)(1) of this section.

(3) All follow-up sample results must be total coliform-negative before the air carrier provides water from the aircraft water system to passengers and crew and returns to the routine monitoring frequency for coliform as specified in paragraph (b) of this section.

(e) *Failure to Collect Required Routine Samples.* If there was a failure to collect and analyze the required number of routine coliform samples, the air carrier must:

(1) Notify passengers and crew in accordance with § 141.805 as expeditiously as possible, but in no case later than 24 hours after discovery of failure to collect required samples or after being notified by EPA of failure to collect required samples, and

(2) Conduct disinfection and flushing within 72 hours in accordance with § 141.804(b)(2).

(3) Collect follow-up samples pursuant to paragraph (d) of this section.

(f) *Failure to Collect Repeat or Follow-up Samples:* If there was a failure to collect and analyze the required number of repeat or follow-up samples, then the air carrier must:

(1) Restrict public access to the aircraft water system in accordance with paragraph (c)(5) of this section as expeditiously as possible, but in no case later than 24 hours after discovery of failure to collect required samples or after being notified by EPA of failure to collect required samples.

(2) Conduct disinfection and flushing pursuant to § 141.804 prior to resumption of unrestricted public access to the aircraft water system, or no later than 72 hours if the aircraft water system cannot be physically disconnected/shut off to the crew and passengers as stated in § 141.804(b)(8); and

(3) Collect follow-up samples pursuant to paragraph (d) of this section.

§ 141.804 Aircraft water system operations and maintenance plan.

(a) Each air carrier must have and follow an aircraft water system operation and maintenance plan for each aircraft water system that it owns or operates. This plan must be included in a Federal Aviation Administration approved or accepted air carrier operations and maintenance program (14 CFR Part 43, 14 CFR Part 91, 14 CFR Part 121).

(b) Each aircraft water system operation and maintenance plan must include the following:

(1) *Watering Point Selection Requirement.* All water sources must be from a Food and Drug Administration (FDA) approved watering point in accordance with 21 CFR 1240.80.

(2) *Procedures for Disinfection and Flushing of Aircraft Water System.*

(i) The air carrier must conduct disinfection and flushing of the aircraft water system in accordance with or be no less stringent than the water system manufacturer's recommendations. The air carrier may conduct disinfection and flushing more frequently, but not less frequently, than the manufacturer recommends.

(ii) The operation and maintenance plan must identify the disinfection frequency, type of disinfecting agent, disinfectant concentration to be used, and the disinfectant contact time, and flushing volume or flushing time.

(iii) In cases where a recommended routine disinfection and flushing frequency is not specified by the aircraft water system manufacturer, the air carrier must perform disinfection and flushing of each aircraft water system no less frequently than quarterly.

(3) Procedures for follow-up sampling in accordance with § 141.803(d).

(4) *Training Requirements.* Training for all personnel involved with the aircraft water system operation and maintenance provisions of this regulation must include, but is not limited to:

(i) Water boarding procedures;

(ii) Sample collection procedures;

(iii) Disinfection and flushing procedures;

(iv) Public health and safety reasons for the requirements of this subpart.

(5) Procedures for Conducting Self-inspections of the Aircraft Water System. Procedures must include, but are not limited to, inspection of: Storage tank, distribution system, supplemental treatment, fixtures, valves, and backflow prevention devices.

(6) *Procedures for Boarding Water.*

(i) Within the United States, the air carrier must board water from an approved FDA watering point.

(ii) The operation and maintenance plan must include a description of how the carrier will ensure that water boarded outside the United States is safe for human consumption.

(iii) In no event should the air carrier knowingly serve water that violates NPDWRs. If water must be boarded that is known to violate NPDWRs, the carrier must meet the requirements in § 141.803(c)(3).

(iv) The operation and maintenance plan must provide a description of how the water will be transferred from the watering point to the aircraft in a manner that ensures it will not become contaminated during the transfer.

(v) The operation and maintenance plan must also describe emergency procedures to be used in the event that water is boarded to operate essential systems, such as toilets, but is not boarded from an FDA approved or otherwise safe watering point, as specified above, including:

(A) Notification of passengers and crew in accordance with § 141.805 as expeditiously as possible, but in no case later than 24 hours after boarding the water, and

(B) Conducting disinfection and flushing within 72 hours in accordance with (b)(2) of this section.

(C) Collect follow-up samples pursuant to § 141.803(d) of this section.

(7) Coliform Sampling Plan. The air carrier must include the coliform

sampling plan prepared in accordance with § 141.802.

(8) A statement as to whether the aircraft water system can be physically disconnected/shut off to the crew and passengers.

(c) For existing aircraft, the air carrier must develop their operations and maintenance plan required by this section by [DATE 6 MONTHS AFTER FINAL RULE IS PUBLISHED IN THE **Federal Register**];

(d) For new aircraft, the air carrier must develop the operations and maintenance plan required by § 141.804 within the first calendar quarter of initial operation of the aircraft.

§ 141.805 Notification of passengers and crew.

(a) Air Carriers must give notice for each aircraft in all of the following situations where:

(1) Public access to the aircraft water system is required to be restricted, in accordance with § 141.803(c)(3) or (4);

(2) There has been a failure to collect required samples, in accordance with § 141.803(e) or (f);

(3) Water has been boarded from a watering point that has not been approved by FDA, or otherwise determined to be safe in accordance with the procedures specified in § 141.804(b)(6); and

(4) The Administrator, the carrier, or the crew otherwise determine that notification is necessary to protect public health.

(b) Air carriers must provide notification to passengers and crew within 24 hours of being informed of sample results or other events which trigger notification, or within 24 hours of being informed by EPA to perform notification, whichever occurs first. Notification must be in a form and manner reasonably calculated to reach all passengers and crew while onboard the aircraft by using one or more of the following forms of delivery:

(1) Broadcast over public announcement system on aircraft;

(2) Posting of the notice in conspicuous locations throughout the area served by the water system. These locations would normally be the galleys and in the lavatories of each aircraft requiring posting;

(3) Hand delivery of the notice to passengers and crew;

(4) Another delivery method approved in writing by the Administrator.

(c) All notification must continue until all follow-up coliform samples are total coliform-negative. Each notice:

(1) Must be displayed in a conspicuous way when printed or posted;

(2) Must not contain overly technical language or very small print;

(3) Must not be formatted in a way that defeats the purpose of the notice;

(4) Must not contain language that nullifies the purpose of the notice;

(5) Must contain information in the appropriate language(s) regarding the importance of the notice reflecting a good faith effort to reach the non-English speaking population served, including where applicable, an easily recognized symbol for non-potable water.

(d) Notice when public access to the aircraft water system is restricted must include:

(1) A prominently-displayed, clear statement in each lavatory indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use; and

(2) A prominent notice in the galley directed at the crew which includes:

(i) A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use;

(ii) A description of the violation or situation triggering the notice, including the contaminant(s) of concern;

(iii) When the violation or situation occurred;

(iv) Any potential adverse health effects from the violation or situation, as appropriate, under paragraph (g) of this section.

(v) The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water;

(vi) What the air carrier is doing to correct the violation or situation; and

(vii) When the air carrier expects to return the system to unrestricted access;

(e) If access to the water system by passengers is physically prevented through disconnecting or shutting off the water, or if water is supplied only to lavatory toilets, and not to any lavatory taps, then only the notice specified in paragraph (d)(2) of this section is required.

(f) Notice when water has been boarded from a watering point not approved by FDA or otherwise determined to be safe in accordance with the procedures in § 141.804(b)(6), or when required monitoring or required disinfection and flushing was not conducted must include:

(1) A prominently-displayed, clear statement in each lavatory indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, or teeth brushing; and

(2) A prominent notice in the galley directed at the crew which includes:

(i) A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, or teeth brushing;

(ii) An indication that water was boarded from a watering point that has not been approved by FDA, or otherwise determined to be safe in accordance with the procedures specified in § 141.804(b)(6), or that required monitoring or required disinfection and flushing was not conducted, and it is thus not known whether the water is contaminated;

(iii) When and where the water was boarded or the specific monitoring or disinfection and flushing requirement was not met;

(iv) Any potential adverse health effects from exposure to waterborne pathogens that might be in the water;

(v) The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water; and

(vi) A statement indicating when the system will be disinfected and flushed and returned to full service if known;

(g) The following standard health effects language must be included in each public notice to the crew.

(1) Health effects language to be used when notice was triggered by detection of total coliforms only (not fecal coliforms or E. coli):

Coliform are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in [INSERT NUMBER OF SAMPLES DETECTED] samples collected and this is a warning of potential problems. If human pathogens are present, they can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(2) Health effects language to be used when any routine or repeat sample is fecal coliform positive or E. coli positive:

Fecal coliform and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(3) Health effects language to be used when notice was triggered by an event other than a coliform-positive sample, including where required monitoring

and analysis or flushing and disinfection was not conducted and where water was boarded from a watering point that has not been approved by FDA or was not otherwise determined to be safe in accordance with procedures specified in § 141.804(b)(6):

Because [REQUIRED MONITORING AND ANALYSIS WAS NOT CONDUCTED], [REQUIRED DISINFECTION AND FLUSHING WAS NOT CONDUCTED] [WATER WAS BOARDED FROM A WATERING POINT NOT APPROVED BY FDA], or [other appropriate explanation], we cannot be sure of the quality of the drinking water at this time. However, drinking water contaminated with human pathogens can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems. This water may be used for hand washing, but not for drinking, food or beverage preparation, or teeth brushing.

§ 141.806 Reporting requirements.

(a) Reporting of the development of the coliform sampling plan and the operations and maintenance plan and coliform sampling frequency.

(1) The air carrier must report to the Administrator that they have developed the coliform sampling plan required by § 141.802 that covers each existing aircraft water system as well as report the frequency for routine coliform sampling identified in the coliform sampling plan by [DATE 6 MONTHS AFTER FINAL RULE IS PUBLISHED IN THE **Federal Register**]. The air carrier must report to the Administrator that they have developed their operations and maintenance plan required by § 141.804 by [DATE 6 MONTHS AFTER FINAL RULE IS PUBLISHED IN THE **Federal Register**];

(2) For each new aircraft meeting the definition of an aircraft water system, which becomes operational after promulgation of the ADWR, the air carrier must report to the Administrator that they have developed the coliform sampling plan required by § 141.802 as well as report the frequency for routine coliform sampling identified in the coliform sampling plan within the first calendar quarter of initial operation of the aircraft. The air carrier must report to the Administrator that they have included the aircraft's water system in the operations and maintenance plan required by § 141.804, and indicate the routine coliform sampling frequency for the aircraft, within the first calendar quarter of initial operation of the aircraft.

(b) The air carrier must report the following information to the Administrator:

(1) A complete inventory of aircraft that are public water systems by [DATE 6 MONTHS AFTER FINAL RULE IS PUBLISHED IN THE **Federal Register**]. Inventory information includes:

(i) The unique aircraft identifier number;

(ii) The status of the aircraft water system as active or inactive;

(iii) The type and location of any treatment equipment installed on the water system; and

(iv) Whether aircraft water can be shut off and the extent to which it can be made inaccessible to the passengers and crew.

(2) Changes in aircraft inventory no later than 10 days following the calendar month in which the change occurred. Changes in inventory information include:

(i) The unique identifier number for any new aircraft, or any aircraft removed from the carrier's fleet;

(ii) Change in status of any aircraft water systems (active to inactive or vice versa); and

(iii) Type and location of any treatment equipment added to or removed from the water system.

(3) All sampling results no later than 10 calendar days following the monitoring period in which the sampling occurred. The monitoring period is based on the monitoring frequency identified in the coliform sampling plan required under § 141.802.

(4) All events requiring notification to passengers and crew and non-routine disinfection and flushing must be reported within 10 days of the event triggering the notification or disinfection and flushing requirement (*e.g.*, notification of positive sample result by laboratory), including an indication of whether required notification was provided to passengers and/or crew.

(5) The air carrier must report to EPA within 10 calendar days the failure to comply with the monitoring or disinfection and flushing requirements of this proposed regulation.

(c) The air carrier must provide evidence of a self-inspection to the Administrator within 90 days of completion of the self-inspection required under § 141.808(b), including an indication that all deficiencies were addressed in accordance with § 141.808(c). The air carrier must also report to the Administrator within 90 days that any deficiencies identified during a compliance audit conducted in accordance with § 141.808(a) have been addressed. If any deficiency has not been addressed within 90 days of identification of the deficiency, the report must also include a description of the deficiency, an explanation as to why it has not yet been addressed, and a schedule for addressing it as expeditiously as possible.

(d) All information required to be reported to the Administrator under this subpart must be in an electronic format established or approved by the Administrator. If an air carrier is unable to report electronically, the air carrier may use an alternative approach that the Administrator approves.

§ 141.807 Recordkeeping requirements.

(a) The air carrier must keep records of bacteriological analyses for at least 5 years and must include the following information:

(1) The date, time and place of sampling, and the name of the person who collected the sample;

(2) Identification of the sample as a routine, repeat, follow-up or other special purpose sample;

(3) Date of the analysis;

(4) Laboratory and person responsible for performing the analysis;

(5) The analytical technique/method used; and

(6) The results of the analysis.

(b) The air carrier must keep records of any disinfection and flushing for at least 5 years.

(c) The air carrier must keep records of a self-inspection for at least 10 years.

(d) The air carrier must maintain sampling plans and make such plans available for review by the Administrator upon request, including during compliance audits.

(e) The air carrier must maintain aircraft water system operation and maintenance plans in accordance with FAA requirements; and make such plans available for review by the Administrator upon request, including during compliance audits.

(f) The air carrier must keep notices to passengers and crew issued as required by this subpart for at least 3 years after issuance.

§ 141.808 Audits and inspections.

(a) The Administrator may conduct routine compliance audits as deemed necessary in providing regulatory oversight to ensure proper implementation of the requirements in this subpart. Compliance audits may include, but are not be limited to:

(1) Bacteriological sampling of aircraft water system;

(2) Reviews and audits of records as they pertain to water system operations and maintenance such as log entries, disinfection and flushing procedures, and sampling results; and

(3) Observation of procedures involving the handling of finished water, watering point selection, boarding of water, operation, disinfection and flushing, and general maintenance and self-inspections of aircraft water system.

(b) Air carriers or their representatives must perform a self-inspection of all water system components for each aircraft water system no less frequently than once every 5 years.

(c) The air carrier must address any deficiency identified during routine compliance audits or self-inspections within 90 days of identification of the deficiency or where such deficiency is identified during extended or heavy maintenance before the aircraft is put back into service. This includes any deficiency in the water system's design, construction, operation, maintenance, or administration, as well as any failure or malfunction of any system component that has the potential to cause an unacceptable risk to health or that could affect the reliable delivery of safe drinking water.

§ 141.809 Supplemental treatment.

(a) Any onboard drinking water treatment units installed onboard existing or new aircraft must be acceptable to FAA and FDA; must meet the applicable NSF/ANSI Standards; and must be installed, operated, and maintained in accordance with the manufacturer's plans and specifications and FAA requirements.

(b) Water treatment and production equipment must produce water that meets the standards prescribed in this part.

§ 141.810 Violations.

(a) An air carrier is in violation of this subpart and must provide notification to passengers and crew onboard any aircraft it owns or operates for which any of the following occur:

(1) It fails to disinfect and flush in accordance with §§ 141.803 and 141.804.

(2) It fails to monitor for coliforms in accordance with § 141.803.

(3) It fails to perform any of the requirements in accordance with § 141.803(c).

(4) It has one or more fecal coliform positive or E. coli positive sample in any monitoring period (routine and repeat samples are used in this determination).

(b) An air carrier is in violation of this subpart when for any aircraft water system it owns or operates any of the following occur:

(1) It fails to provide notification to passengers and crew in accordance with § 141.805.

(2) It fails to comply with the reporting and recordkeeping requirements of this subpart.

(3) It fails to conduct a self-inspection or address a deficiency in accordance with § 141.808.

(4) It fails to develop a coliform sampling plan in accordance with § 141.802, or fails to have and follow an operations and maintenance plan, which is included in a FAA approved or accepted program in accordance with § 141.804.

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Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301

Source Rules Involving U.S. Possessions and Other Conforming Changes; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9391]

RIN 1545–BF85

Source Rules Involving U.S. Possessions and Other Conforming Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide rules under section 937(b) of the Internal Revenue Code (Code) for determining whether income is derived from sources within a U.S. possession or territory specified in section 937(a)(1) (generally referred to in this preamble as a ''territory'') and whether income is effectively connected with the conduct of a trade or business within a territory. The final regulations also provide guidance under sections 876, 881, 884, 931, 932, 933, 934, 935, 957, and 6688 of the Code to reflect amendments made by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085) (the 1986 Act) and the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (the 2004 Act). Conforming changes are also made to regulations under sections 1, 170A, 861, 871, 901, 1402, 6038, 6046, and 7701 of the Code.

DATES: *Effective Date:* These regulations are effective on April 9, 2008.

Applicability Date: For dates of applicability, see §§ 1.1–1(d), 1.170A–1(k), 1.861–3(d), 1.861–8(h), 1.871–1(d), 1.876–1(f), 1.881–1(f), 1.881–5(i), 1.884–0(b), 1.901–1(j), 1.931–1(d), 1.932–1(j), 1.933–1(e), 1.934–1(e), 1.935–1(g), 1.937–2(l), 1.937–3(f), 1.957–3(d), 1.1402(a)–12(c), 1.6038–2(m), 1.6046–1(l), 301.6688–1(d), 301.7701(b)–9(b)(5).

FOR FURTHER INFORMATION CONTACT: J. David Varley (202) 435–5262 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 11, 2005, the Treasury Department and the IRS published in the **Federal Register** temporary regulations (TD 9194, 70 FR 18920, as corrected at 70 FR 32589–01), which provided rules to implement section 937 and to conform existing regulations to other legislative changes with respect to the territories. A notice of proposed rulemaking (REG–159243–03, 70 FR 18949) cross-referencing the temporary regulations was published in the **Federal Register** on the same day. Written comments were received in response to the notice of proposed rulemaking and a public hearing on the proposed regulations was held on July 21, 2005.

After consideration of the comments, the Treasury Department and the IRS on January 31, 2006, published in the **Federal Register** final regulations (TD 9248, 71 FR 4996, as corrected at 71 FR 14099) under section 937(a) concerning the determination of bona fide residency in the territories. Following further comments and consideration, the Treasury Department and the IRS on November 14, 2006, published in the **Federal Register** final regulations (TD 9297, 71 FR 66232, as corrected at 71 FR 75882) under section 937(a) providing additional rules for determining bona fide residency in the territories.

The proposed regulations relating to source and effectively connected income with respect to the territories (specifically, §§ 1.937–2 and 1.937–3) as well as the other rules concerning the territories are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions and Summary of Comments

The final regulations under Code section 937(b) provide rules for determining whether income is from sources within a territory and whether income is effectively connected with the conduct of a trade or business within a territory (territory ECI). Section 937(b)(1) provides that, except as provided in regulations, rules similar to the rules for determining whether income is from sources within the United States or is effectively connected with the conduct of a trade or business within the United States will apply for purposes of determining whether income is from sources within a specified territory or effectively connected with the conduct of a trade or business in any such territory. Section 937(b)(2) provides that, except as provided in regulations, any U.S. source income or U.S. effectively connected income will not be treated as territory source income or as territory ECI.

The U.S. tax consequences of classifying income as being from sources within a territory or as being territory ECI vary from territory to territory. The final regulations under Code sections 931 through 935 contain rules implementing the operative substantive and procedural provisions of U.S. income tax law specifically applicable to each territory, including the rules regarding the filing requirements and the determination of the income tax liability of bona fide residents and other persons with territory source income. In addition to the rules under Code sections 937(b) and 931 through 935, the final regulations provide conforming changes to rules under related provisions of the Code.

The Treasury Department and the IRS recognize that the interaction of section 937 and other sections of the Code relating to the territories requires a balance between implementing the policies Congress intended in section 937(b) while recognizing the territories' efforts to retain and attract workers and businesses. As discussed in more detail in this preamble, the final regulations seek to achieve this balance. For example, the final regulations allow an individual to elect, under the special gain rule that applies to property owned by an individual before the individual became a bona fide resident of the territory, to treat as territory source the portion of the gain that accrued while the individual was a bona fide resident of the territory. The Treasury Department and the IRS will continue to consider comments received and anticipate that additional changes to the final regulations may be made.

I. Territory Source Income and Territory ECI

A. Territory Source Income

Section 937(b)(1) expressly grants the Treasury Department and the IRS the regulatory authority to provide exceptions to the general territory source rule, which otherwise applies sourcing principles similar to those of the U.S. source rules. The legislative history to section 937 indicates that Congress intended that the Treasury Department and the IRS use this authority to provide exceptions to the general rules regarding territory source income and territory ECI as appropriate. H.R. Conf. Rep. 108–755, at 795 (2004). The legislative history indicates that Congress anticipated that the regulatory authority would be used to continue the existing treatment of income from the sale of goods manufactured in a territory and to prevent abuse, such as acquiring residence in a territory just prior to the disposition of appreciated property in order to avoid U.S. tax on such disposition. *Id.*

Under the temporary and proposed regulations, except as otherwise specifically provided, the principles of sections 861 through 865 and the regulations under those provisions

generally apply for purposes of determining the gross and taxable income from sources within and without a territory. The temporary and proposed regulations further state that in the application of such principles, the name of the relevant territory will be used instead of the term ''United States''; the term ''bona fide resident of'' followed by the name of the relevant territory will be used instead of the term ''United States resident''; and the term ''domestic'' will be construed to mean created or organized in the relevant territory.

The temporary and proposed regulations also provide exceptions to the general rule for determining whether income is from sources within a territory. In accordance with the legislative history to the 2004 Act, the temporary and proposed regulations preserve the manufacturing-sales income rules in § 1.863–3(f). In addition, the temporary and proposed regulations provide special rules preventing dividends and interest paid by certain closely held territory corporations from being territory source income. Similarly, the temporary and proposed regulations provide that gains from dispositions of appreciated property owned by an individual prior to becoming a resident is not territory source income under a special 10-year look-back rule, and there are special rules regarding compensation for military service. As discussed in more detail in part I.C., the temporary and proposed regulations also reflect section 937(b)(2), which is the statutory exception to the general territory source rule.

1. General Territory Source Rule

In response to the temporary and proposed regulations, commentators requested further guidance regarding the application of the general rule for determining whether income is from sources within a territory. In particular, commentators questioned whether, in applying the principles of section 861 through 865, the only permissible modifications to the U.S. source rules were the substitutions described in § 1.937–2T(b).

The Treasury Department and the IRS agree that the general rule for determining whether income is from sources within a territory should be modified to provide greater flexibility in applying the principles of sections 861 through 865 as well as to prevent abuse. Consequently, the final regulations provide that it generally will be sufficient to make certain specified substitutions described in § 1.937–2(b) when determining whether income is from within or without a territory. However, the final regulations provide that additional substitutions may be necessary to accomplish the intent of section 937(b).

The final regulations also provide a necessary limitation and rule of application to reflect the Congressional intent in enacting the rules of section 937(b)(1). Under this limiting rule, in no event will a bona fide resident of a territory or other person have, as a result of the application of the principles of the U.S. source rules, more income from sources within the relevant territory than the amount of income from sources within the United States that a similarly situated U.S. person who is not a bona fide resident of a territory would have under the U.S. source rules.

Conforming amendments are made to the territory ECI rules to reflect these amendments to the territory source rules. See part I.B. Taxpayers may choose to apply the amendments to the territory source and ECI rules retroactively to open taxable years ending after October 22, 2004.

2. Space and Ocean Income and International Communications Income

Section 863(d) provides that income derived from space or ocean activity is sourced within the United States if it is derived by a U.S. person and is sourced without the United States if derived by a foreign person. Section 863(e) generally provides that income derived from international telecommunications activity by a U.S. person is treated as one-half from sources within the United States and one-half from sources without the United States. Commentators specifically requested greater clarity regarding how the principles of sections 863(d) and (e) were to be applied to determine whether income from space and ocean activity and international communications is from sources within a territory.

The Treasury Department and IRS agree that the kinds of further modifications to the general rule that are discussed in part I.A.1 would be specifically warranted with respect to applying the principles of the space and ocean and international communications source rules in the territories. Consequently, the final regulations provide that in applying the principles of section 863(d) and (e) to determine whether a bona fide resident's income is within or without a territory, the term ''bona fide resident of a possession'' will be used instead of the term ''United States person.''

3. Transportation Income

Under section 863(c)(1), transportation income is treated as U.S. source if it is attributable to transportation beginning and ending in the United States. However, section 863(c)(2) provides that if the transportation begins or ends in the United States but is not described in section 863(c)(1), then one-half of the income is U.S. source (the 50–50 source rule). Section 863(c)(2) provides an exception to the 50–50 source rule in the case of transportation income derived from personal services of a taxpayer, unless such income is attributable to transportation that begins (or ends) in the United States and ends (or begins) in a territory. In the case of transportation income derived in connection with a vessel, the rules of section 863(c)(2) apply only in the case of taxpayers who are citizens or resident aliens.

Commentators argued that the rules of section 863(c)(2) should not apply to transportation income derived from personal services of bona fide residents of the U.S. Virgin Islands. These commentators argued that the application of these rules to a bona fide resident of the U.S. Virgin Islands is contrary to Congressional intent in enacting section 934(b), as interpreted by the commentators. Accordingly, they maintained, the Treasury Department and the IRS should exercise their regulatory authority under section 937(b)(1) to provide that transportation income that is derived from personal services of a bona fide resident of the U.S. Virgin Islands and that otherwise would be sourced under the 50–50 source rule principles of section 863(c)(2), should be sourced entirely within the U.S. Virgin Islands, regardless of the beginning or endpoint of the transportation to which the income is attributable.

The Treasury Department and the IRS believe that their regulatory authority under section 937(b)(1) does not extend to deviating from the source rules of section 863(c)(2). Congress clearly contemplated territorial tax issues when enacting section 863(c) as it provided special source rules in the case of transportation income derived from transportation between the United States and the territories. See H.R. Conf. Rep. 98–861, at 1622 (1984). Congress intended that these rules also would apply for purposes of determining the source of income in territories that mirror the U.S. income tax. *Id.* When section 863(c)(2) was amended by the 1986 Act, the same legislation that enacted sections 932 and 934(b)

applicable to the U.S. Virgin Islands, Congress preserved the special 50–50 source rule applicable to transportation between the United States and a territory and specifically applied the rule to such income that is derived from personal services. See H.R. Conf. Rep. 99–841, at II–599 (1986).

Furthermore, the commentators premised their argument for changing the source of transportation income on section 934, which only applies to the U.S. Virgin Islands. In the 2004 Act, Congress sought to rationalize the source of income rules applicable to the territories. See H.R. Conf. Rep. 108–755, at 794 (2004). Thus, the rules set forth in section 937 for determining bona fide residency and source of income are intended to apply uniformly to the territories rather than to provide tailored exceptions applicable to only certain territories such as the U.S. Virgin Islands.

Consequently, § 1.937–2 does not incorporate special rules with respect to transportation income between the United States and the U.S. Virgin Islands.

4. De Minimis Rule

Section 861(a)(3) generally provides that compensation for labor or personal services performed in the United States is U.S. source income. Under the principles of section 861(a)(3), income from services performed in a territory is treated as territory source income. However, while section 861(a)(3) provides a de minimis exception to this general rule for services performed by nonresident aliens in the United States for minimal compensation over a short period of time, the temporary and proposed regulations specifically provide that the de minimis exception does not apply for determining whether income from services is from sources within a territory. Consequently, a U.S. citizen or resident alien who is not a bona fide resident of the U.S. Virgin Islands, for example, may have to file an income tax return with and pay tax to the U.S. Virgin Islands under section 932(a) even if the individual is engaged in only de minimis personal services in the territory. In this regard, the temporary and proposed regulations carry over the pre-existing rules in former § 1.863–6 for determining income within and without a territory. See § 1.863–6 (2004).

Several commentators requested a de minimis exception to the general rules for the sourcing of income from personal services in a territory. The Treasury Department and the IRS agree that such a rule reduces taxpayer burden and promotes efficient tax administration. Accordingly, the final regulations eliminate the rule in the temporary and proposed regulations that specifically provides that in applying the principles of section 861(a)(3), the de minimis exception does not apply. An example in the final regulations illustrates that a U.S. citizen or resident who is not a bona fide resident of a territory but who performs services in a territory temporarily for no more than 90 days during the taxable year and for no more than $3000 (in the aggregate) generally will not have income from sources within the territory.

5. Gains From Certain Dispositions of Personal Property

The temporary and proposed regulations provide a special rule for gains from dispositions of certain property held by a U.S. person prior to becoming a resident of a territory. See § 1.937–2T(f)(1). Under this rule, gains from dispositions of such property within 10 years after becoming a territory resident generally are treated as income from sources outside of the territory. The special gain rule supplements, and does not supersede, the similar special gain rule of section 1277(e) of the 1986 Act, which applies to individuals who become residents of American Samoa, Guam, or the Northern Mariana Islands (NMI) (collectively, the Pacific territories).

Commentators noted that the special gain rule characterizes all gain from property of former U.S. residents as non-territory source income, including any gain attributable to appreciation that occurs while the individual is a bona fide resident of the relevant territory. For example, if a U.S. citizen and lifelong resident of a territory who owns stock in a corporation moves to the United States for a few years and then re-establishes bona fide residence in the territory and sells the stock within 10 years, most of the appreciation in the stock may be attributable to the period in which the individual was a bona fide resident of the territory. However, under the special gain rule, because of the period of U.S. residence, none of the gain would qualify as territory source income.

The Treasury Department and the IRS agree that the special gain rule should be modified to target more precisely gain attributable to appreciation occurring during the time that an individual was not a bona fide resident of the relevant territory. Accordingly, the final regulations provide that an individual may elect to split the source of gains from the sale or other disposition of appreciated property subject to the special gain rule by using a mark-to-market allocation in the case of marketable securities and a time-based allocation rule in the case of other personal property. This election will more accurately target the abuse that the special gain rule was intended to address. The election also operates to modify the special gain rule of the 1986 Act, as authorized therein. Individuals may retroactively apply the election to dispositions made after April 11, 2005.

B. Territory ECI

Section 937(b)(1) provides that rules similar to those for determining whether income is effectively connected with the conduct of a trade or business within the United States should also apply in determining whether income is territory ECI, except as provided in regulations. Accordingly, the temporary and proposed regulations generally provide that the principles of section 864(c)(4) apply for purposes of determining whether any income from sources without a territory (U.S. source or other non-territory source income) is treated as territory ECI.

Section 864(c)(4) limits the types of income from foreign sources that can be effectively connected income to certain rents or royalties; dividends or interest connected with the conduct of a banking or financial business; gain from the sale or exchange of inventory; and insurance company income. Personal services income that is foreign source cannot be effectively connected income under section 864(c)(4).

Commentators requested that, instead of applying the principles of section 864(c)(4), the final regulations adopt the principles of section 864(c)(2) and (c)(5) for purposes of determining whether income from sources without a territory is territory ECI. This would expand the types of non-territory source income that could be treated as territory ECI and particularly would include income from personal services. For territories such as the U.S. Virgin Islands this would mean that additional types of non-territory source income may be eligible for reductions of territorial income tax because section 934(b) allows the U.S. Virgin Islands to reduce its territorial income tax on income that is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands. These commentators believe that Congress intended for section 934 (and similar provisions applicable to other territories) to promote economic activity in the territories and that the section 937 regulations should better reflect the policy choices that these commentators believe were made in section 934(b).

Congress provided in section 937(b)(1) that rules similar to those for determining whether income is effectively connected with the conduct of a trade or business within the United States should also apply in determining whether income is territory ECI, except as provided in regulations. The legislative history to section 937 indicates that Congress was concerned about U.S. citizens and residents claiming to be exempt from U.S. tax on their worldwide income and claiming reductions from territorial income tax when they did not live and work in the territories. H.R. Conf. Rep. 108–755, at 793–94. Adopting the principles of section 864(c)(2) and (c)(5) to determine whether income is territory ECI would allow personal services income derived from sources outside a territory (for example, U.S. source income) to be treated as territory ECI, contrary to Congressional intent. The Treasury Department and the IRS do not believe their regulatory authority extends to prescribing the use of the principles of section 864(c)(2) and (c)(5) for purposes of determining whether income for sources without a territory is territory ECI.

Furthermore, section 934 does not provide a basis for interpreting the regulatory authority under section 937(b) in such a liberal manner. In enacting section 937, Congress amended the rules related to the territories notwithstanding section 934. Moreover, the legislative history to section 934 does not reflect these commentators' view of Congressional intent in enacting section 934. Even while recognizing the goal of encouraging economic development in the U.S. Virgin Islands through appropriate territorial income tax reductions, the legislative history of section 934 indicates that the statute was enacted in part because of concerns that certain territorial income tax programs, which were intended to provide incentives to corporations and residents of the U.S. Virgin Islands that made new investments in the U.S. Virgin Islands, were having the effect of reducing the tax liability attributable to not only income from sources within the territory but also income from sources within the United States. S. Rep. No. 1767, 86th Cong. 2nd Sess. 4 (1960); see also H.R. Rep. No. 99–426, at 485–486 (1985); and S. Rep. No. 99–313, at 479 (1986). The legislative history to section 934 indicates that economic development in the U.S. Virgin Islands should not be attained by granting tax reductions to taxpayers (other than certain U.S. Virgin Islands corporations) with respect to income derived from investments from sources outside of the territories. *Id.*

Other commentators suggested that U.S. source services income should be treated differently from other non-territory source services income. Specifically, they suggested that the rules of section 864(c)(4) should apply to U.S. source personal services income while the principles of section 864(c)(2) and (c)(5) should apply to other non-territory source personal services income. The Treasury Department and the IRS note that the legislative history to section 937 indicates that Congress was concerned about U.S. citizens and residents claiming reduced rates of territorial income taxation on personal services income by individuals that were not living and working in the territories. H.R. Conf. Rep. 108–755, at 793–94. Congress also expressed concern about possible opportunities for erosion of the U.S. tax base associated with the territory ECI rule. *Id.*

For these reasons, the Treasury Department and IRS have not adopted the commentators' suggestions regarding the determination of whether income is effectively connected with the conduct of a trade or business in a territory under section 937(b)(1). Accordingly, the general rule in the temporary and proposed regulations for determining territory ECI is adopted in the final regulations with minor modifications.

Similar to the modifications made to the general rule for determining whether income is from sources within a territory, the final regulations amend the general territory ECI rule to provide that additional substitutions beyond the routine substitution of the name of the relevant territory for the term ''United States'' may be necessary in some cases to accomplish the intent of section 937(b)(1). The final regulations also adopt a limitation similar to its counterpart in the general territory source rule, precluding any application of the principles of section 864(c) from resulting in a greater amount of territory ECI than the amount of U.S. effectively connected income that a similarly situated U.S. person who is not a bona fide resident of a territory would have under U.S. rules. Taxpayers may choose to apply these rules in § 1.937–3(b) retroactively to open taxable years ending after October 22, 2004.

C. U.S. Income Rule

Section 937(b)(2) provides that notwithstanding the general territory source rule, any income from sources within the United States or effectively connected with the conduct of a trade or business within the United States is not treated as income from sources within a territory or as territory ECI (the U.S. income rule). The legislative history to section 937(b)(2) indicates that Congress wanted the Treasury Department and the IRS to create regulatory exceptions to the general rules for determining territory source and territory ECI and to the U.S. income rule ''as appropriate.'' H.R. Conf. Rep. 108–755, at 794. Congress anticipated that these exceptions would be used ''to prevent abuse.'' *Id.* at 795. Congress was ''concerned that the general rules for determining whether income is effectively connected with the conduct of a trade or business in a [territory] present numerous opportunities for erosion of the U.S. tax base.'' *Id.* at 794.

The temporary and proposed regulations generally adopt the U.S. income rule without exception. However, the temporary and proposed regulations tighten the provision by adding an anti-conduit rule to prevent the avoidance of the U.S. income rule.

In response to the temporary and proposed regulations, commentators requested that the Treasury Department and the IRS exercise their regulatory authority to provide additional exceptions to the U.S. income rule.

1. Scope of the U.S. Income Rule

Numerous commentators argued that the scope of the U.S. income rule should be narrowed. The commentators argued that without additional regulatory exceptions, the U.S. income rule will hamper efforts to promote private sector economic development in the territories because it does not permit a territory to provide tax reductions for U.S. source business income even if all of the activity generating that income occurs in the territory. In addition, these commentators argued that Congress intended to encourage the economic development of the territories by allowing, for example, the U.S. Virgin Islands to provide territory tax incentives under section 934 with respect to income effectively connected with the conduct of a trade or business in the U.S. Virgin Islands, even where that income is from U.S. sources.

Commentators proposed various amendments to the general scope of the U.S. income rule. For example, one commentator essentially suggested that the U.S. income rule should not apply to income that is already treated as territory ECI under the general rule of section 937(b)(1), which applies the principles of section 864(c)(4) to income from U.S. sources. Thus, under this suggestion, the U.S. income rule would have no application to the determination of whether U.S. source income may be treated as territory ECI.

The commentator further argued that Congress was only concerned about U.S. source personal services income being treated as territory ECI and that such income is already prevented from being treated as territory ECI if the principles of section 864(c)(4) apply under the general rule.

This purportedly limited purpose for enacting section 937(b)(2) is difficult to reconcile with the statute's breadth, as a broad application to U.S. source income appears to be the most significant effect of the U.S. income rule. If adopted, such a rule would render the U.S. income rule largely unnecessary. The legislative history to section 937 indicates that Congress clearly intended that the U.S. income rule would apply to prevent U.S. source income from being treated as territory ECI. The legislative history also indicates that Congressional concern about the erosion of the U.S. tax base through the source and effectively connected income rules was a more general concern and not limited to personal services income. Consequently, the Treasury Department and the IRS do not believe that their regulatory authority under section 937(b)(2) extends to providing such a broad exception to the U.S. income rule.

Other commentators suggested that the U.S. income rule should apply only when an item of income is U.S. source or attributable to a U.S. permanent establishment, as determined under the U.S. model treaty rules, as opposed to income effectively connected with the conduct of a U.S. trade or business. In the case of territory source income or territory ECI, this suggested change would essentially limit the application of the U.S. income rule to income that is attributable to a fixed place of business in the United States.

This suggestion would permit a trade or business to carry on significant activities in the United States as long as it does not do so through a fixed physical location, such as an office, branch, factory, or place of management, or as long as it maintains a facility in the U.S. that is used for certain permissible activities such as storing, displaying, or delivering goods, purchasing or collecting information, or other activities of a preparatory or auxiliary nature, such as advertising or supplying information. See U.S. Treasury Department, Model Income Tax Treaty art. 5 (2006). A territory business could also utilize independent agents to carry on business in the United States without triggering the U.S. income rule. *Id.*

If the U.S. income rule did not apply, income attributable to these activities could be eligible for territory tax incentives, a result that potentially could lead to an erosion of the U.S. tax base with respect to income that is from U.S. sources or effectively connected with the conduct of a U.S. trade or business. In light of the Congressional concerns with U.S. base erosion and the consequent lack of authority to provide such a broad regulatory exception, the final regulations do not adopt a permanent establishment standard as part of the U.S. income rule.

Some commentators similarly suggested that the U.S. income rule should apply only when an item of income is both U.S. source and attributable to a U.S. office or fixed place of business. Thus, any U.S. source income not effectively connected with a trade or business in the United States could be treated as territory ECI and therefore qualify for tax incentives in certain territories. This suggested change also would render the U.S. income rule inapplicable to all territory source income that is effectively connected with the conduct of a U.S. trade or business. The legislative history to section 937 does not suggest that Congress intended the Treasury Department to exercise its regulatory authority to allow income earned by a U.S. trade or business to receive territory tax benefits. Therefore, the Treasury Department and the IRS do not believe there is adequate regulatory authority to adopt this suggestion.

Other commentators requested exceptions to the U.S. income rule for certain classes of non-territory source income that may otherwise be territory ECI. For example, commentators requested that insurance income from insuring U.S. risks, interest income from U.S. payors to finance centers, or rents and royalties from the use of intangible property in the United States be excepted from the scope of the U.S. income rule to the extent income is territory ECI. These commentators asserted that, notwithstanding that such income is generally U.S. source, the economic activity that gives rise to the income occurs in the territories. Accordingly, these commentators argued, this income does not provide the opportunities to erode the U.S. tax base that the U.S. income rule was intended to prevent.

Even though the activities giving rise to these classes of income may result from sufficient economic activity in the territory so that the income otherwise would constitute territory ECI, the Treasury Department and the IRS note that these classes of income often arise in part from U.S.-based activities such as marketing. Thus, the Treasury Department and the IRS do not believe that their regulatory authority extends to removing income derived from the specified activities from the express coverage of the U.S. income rule under section 937(b)(2). However, the final regulations do provide additional examples illustrating that income from personal services that, for example, lead to the development of intangible property is not subject to the U.S. income rule if such services income is from territory sources. See part I.C.2.

2. Examples Illustrating the U.S. Income Rule

Although the proposed and temporary regulations include several examples applying section 937(b) and temporary regulations §§ 1.937–2T and –3T, comments received by the Treasury Department and the IRS indicated a need for additional examples illustrating the operation of the U.S. income rule. In Notice 2006–76 (2006–38 IRB 459) (see § 601.601(d)(2)(ii)(*b*)), the Treasury Department and the IRS provided two additional examples in response to this concern and explained that taxpayers may treat the examples set forth in the notice as illustrative of the rules in the temporary regulations. The Treasury Department and the IRS also signaled in the notice that these two additional examples, or substantially similar examples, would be included in the final regulations.

Commentators responded positively to the publication of the examples in Notice 2006–76, and the Treasury Department and the IRS did not receive any substantive questions or comments. Accordingly, the examples in Notice 2006–76 are included in the final regulations.

The final regulations also provide a new example with respect to the provision of contingent-payment contractual terms for services performed in a territory. This example clarifies that compensation income received for providing personal services that lead to the development of intangible property for the service recipient is not subject to the U.S. income rule to the extent that the compensation income is from sources within the territory.

II. Operative Provisions

A. American Samoa

Under section 931(a), income from sources in a section 931 possession generally is excluded from the gross income of a bona fide resident of a section 931 possession. (American Samoa currently is the only section 931 possession because it is the only territory that has entered into an implementing agreement under sections

1271(b) and 1277(b) of the 1986 Act.) However, under section 931(d), the exclusion does not apply to amounts received for services performed as an employee of the United States or any agency thereof. The final regulations clarify that for this purpose under current law, an employee of the government of a section 931 possession is not an employee of the United States or of an agency of the United States. Thus, compensation received as an employee of the territorial government of a section 931 possession is properly excluded from U.S. gross income. A conforming clarification with respect to Puerto Rico is included in the final regulations under section 933.

The effect of this rule change will be mainly administrative. Employees of the territorial government now will report their compensation as gross income on only the territorial income tax return and thus, depending on their other income, may be spared a U.S. filing obligation, and all tax on such compensation will be paid directly to the territorial government rather than potentially through a cover-over mechanism under section 7654. The Treasury Department and the IRS believe that this change will reduce overall taxpayer burden and enhance the efficiency of Federal tax administration, while also more fully reflecting the independent operation of the territorial taxing authority.

Rev. Rul. 56–127 (1956–1 CB 323) (see § 601.601(d)(2)(ii)(*b*)), which held under prior law that employees of the government of American Samoa are considered employees of the United States or an agency thereof, is no longer determinative and is obsoleted by this Treasury decision.

B. Guam and the Northern Mariana Islands

Although section 935 was repealed by the 1986 Act, neither Guam nor the NMI has agreed to the entry into force of the implementing agreement required under sections 1271(b) and 1277(b) of the 1986 Act, and therefore neither of those territories is a section 931 possession as defined in § 1.931–1(c)(1). Rather, section 935 remains in effect with respect to bona fide residents of Guam and the NMI. The final regulations under section 935 generally retain the provisions of the temporary and revised regulations without modification.

C. Puerto Rico

The final regulations generally retain the provisions of the temporary and proposed regulations under section 933 without modification. However, the final regulations explicitly provide that for purposes of the section 933 exclusion, employees of the Puerto Rico territorial government are not treated as employees of the United States or of a Federal agency. This language, which comports with the consistent historical understanding that the compensation of such employees is excludable from Federal gross income, is added only for conformity with the revision being made to the final section 931 regulations to address certain obsolete guidance with respect to American Samoa, as explained in part II.A.

D. United States Virgin Islands

Section 932(c) generally provides that an individual (whether a U.S. citizen or alien) who is a bona fide resident of the U.S. Virgin Islands must file an income tax return with the U.S. Virgin Islands tax authorities. If the individual properly reports income from all sources identifying the source of each item of income on this return and pays all tax properly due with respect to such income, then such income is excluded from gross income for Federal income tax purposes. Consequently, such individuals have a Federal income tax return filing obligation if they fail to report or properly identify the source of any of their income on their U.S. Virgin Islands income tax return or if they fail to pay all of the tax properly due with respect to their income. The temporary and proposed regulations reflect this statutory filing regime.

Commentators asked for additional guidance with respect to the U.S. filing obligations of individuals who take the position that they are bona fide residents of the U.S. Virgin Islands and file their income tax returns with the U.S. Virgin Islands under section 932(c). In particular, commentators asked for clarification with respect to correcting inadvertent errors on U.S. Virgin Islands income tax returns, determining the amount of any residual Federal income tax liability for individuals who fail to pay all the tax properly due to the U.S. Virgin Islands, and clarification of the application of the statute of limitations on assessments of Federal income tax by the IRS.

Although the final regulations generally continue to reflect the statutory regime under 932(c) as set forth in the temporary and proposed regulations, the Treasury Department and the IRS agree that additional guidance with respect to the Federal filing requirements and obligations under section 932(c) is warranted. The final regulations provide an example illustrating that a bona fide resident of the U.S. Virgin Islands will not be subject to any U.S. filing requirement if, in order to correct a return previously filed with the U.S. Virgin Islands, that individual timely files an amended return with the U.S. Virgin Islands. The Treasury Department and the IRS believe that individuals generally should first avail themselves of similar administrative remedies that the U.S. Virgin Islands may provide.

The final regulations also provide a new rule for purposes of determining the residual Federal income tax liability, if any, of individuals who are bona fide residents of the U.S. Virgin Islands. Under this new rule, such individuals are allowed a credit for amounts already paid to the U.S. Virgin Islands. Thus, their residual Federal income tax liability should equal the difference between their entire income tax liability and the amount of income tax already paid to the U.S. Virgin Islands.

Section 932(b) provides a similar credit for U.S. citizens and resident aliens who are not bona fide residents of the U.S. Virgin Islands. If such individuals have income from sources within the U.S. Virgin Islands or income that is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands, then sections 932(a) and (b) generally require such individuals to file an income tax return with both the IRS and the U.S. Virgin Islands tax authorities, paying an applicable percentage of taxes attributable to such income to the U.S. Virgin Islands. The individual may claim a credit for the tax required to be paid to the U.S. Virgin Islands, so that only the balance is due to the United States. Like the temporary and proposed regulations, the final regulations reflect these statutory rules. In the event that an individual who is not a bona fide resident pays more tax to the U.S. Virgin Islands than is required, Rev. Proc. 2006–23 (2006–1 CB 900) (see § 601.601(d)(2)(ii)(*b*)) provides procedures for requesting U.S. competent authority assistance for resolving inconsistent tax treatment with respect to such payments by the IRS and the U.S. Virgin Islands tax authorities.

With respect to the Federal statute of limitations, the final regulations incorporate the interim rules announced in Notice 2007–31 (2007–16 IRB 971) under the authority of section 7654(e). Accordingly, the final regulations under section 932(c) provide that the Federal statute of limitations under section 6501(a) for a U.S. citizen or resident alien who claims to be a bona fide resident of the U.S. Virgin Islands generally will start running upon the filing of an income tax return with the U.S. Virgin Islands. This general rule

applies as long as the IRS and U.S. Virgin Islands have in place an agreement for the automatic exchange of information satisfying the requirements of the Commissioner of the IRS. Because the working arrangement announced in Notice 2007–31 satisfies this condition, this general rule applies to years ending on or after December 31, 2006. In the event that the working arrangement is terminated and in the absence of a successor agreement, an individual claiming to be a bona fide resident of the U.S. Virgin Islands generally must file an income tax return with the IRS in order to start the Federal statute of limitations period. In such circumstances, however, the Commissioner may by administrative pronouncement specify other rules for this purpose. For years ending before December 31, 2006, the U.S. filing requirements provided in Notice 2007–19 (2007–11 IRB 689) continue to apply. See § 601.601(d)(2)(ii)(*b*).

The temporary and proposed regulations amend the regulations under section 6688 (concerning assessable penalties with respect to information reporting under section 7654) to conform to changes made by the 2004 Act. The temporary and proposed regulations provide that the penalty applies to individuals who are subject to reporting requirements promulgated under the authority of section 937(c) (concerning individuals who become or cease to be bona fide residents of a territory) or section 7654 (concerning the coordination of United States and territorial income taxes). This information reporting includes the requirement to file Form 8689, ''Allocation of Individual Income Tax to the U.S. Virgin Islands,'' and the requirement to file Form 8898, ''Statement for Individuals Who Begin or End Residence in a U.S. Possession.''

One commentator noted that section 6688 applies only to ''individuals described in section 7654(a)'' and therefore should not extend to Form 8689, which is required of only U.S. citizens or residents (other than bona fide residents of the U.S. Virgin Islands) who have income derived from sources within the U.S. Virgin Islands or effectively connected with the conduct of a trade or business in the U.S. Virgin Islands, or spouses who file joint returns with such individuals. The Treasury Department and the IRS agree that such individuals are not described in section 7654(a), which generally applies only to bona fide residents of an applicable territory. The final regulations under section 6688 are amended accordingly.

E. Application of Subpart F to Bona Fide Residents of a Territory

In general, corporations created or organized in a territory are treated as foreign corporations for Federal income tax purposes, including the subpart F provisions relating to controlled foreign corporations. Section 957(c), however, provides a significant exception for bona fide residents of Puerto Rico and section 931 possessions. In cases where the exception applies, such an individual is not treated as a U.S. person for purposes of subpart F. Consequently, such an individual is not treated as a U.S. shareholder under section 951(b), and where such individuals own more than 50 percent of the vote or value of a corporation created or organized under the laws of Puerto Rico (a Puerto Rico corporation) or a section 931 possession (a section 931 corporation), as the case may be, such a corporation is not treated as a controlled foreign corporation under section 957(a).

In the case of a bona fide resident of Puerto Rico, the exception applies under section 957(c)(1) with respect to a Puerto Rico corporation if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico. With respect to bona fide residents of a section 931 possession, the exception applies under section 957(c)(2) with respect to a corporation organized or created in the section 931 possession if: (1) 80 percent or more of the gross income of the corporation during the three-year testing period ending at the close of the taxable year (or applicable part) was derived from sources within such territory or was effectively connected with the conduct of a trade or business in such a territory; and (2) 50 percent of more of the gross income of the corporation for such period (or part) was derived from the active conduct of a trade or business within such territory (the 80/50 conditions).

For purposes of determining whether income is from sources within Puerto Rico, the temporary and proposed regulations generally apply the territory source rules in § 1.937–2T, including the special rules for determining whether dividends to individuals who own more than 10 percent of the total voting of a territory corporation are from sources within the relevant territory. Those dividend source rules treat only a ratable portion of any dividend paid or accrued by a territory corporation to such a shareholder as territory source income unless the corporation meets the same 80/50 conditions as those applied under section 957(c)(2). Consequently, under the temporary and proposed regulations, unless a Puerto Rico corporation's gross income is derived entirely from sources within Puerto Rico, the corporation must meet the same 80/50 conditions applicable to a section 931 corporation in order for section 957(c)(1) to apply.

Commentators from Puerto Rico objected to the effect of the temporary and proposed regulations with respect to the application of section 957(c)(1). The commentators noted that since 1986, all dividends from Puerto Rico corporations were treated as income from sources within Puerto Rico, and therefore such corporations were not treated as controlled foreign corporations for 10 percent shareholders who were bona fide residents of Puerto Rico. Commentators noted that the legislative history to neither the 2004 Act nor the 1986 Act, which amended section 957(c) by applying the 80/50 conditions with respect to section 931 corporations but did not specifically apply those conditions to Puerto Rico corporations, makes any reference to Congressional intent to apply the 80/50 conditions to Puerto Rico corporations.

The Treasury Department and the IRS believe that given the distinct statutory tests under sections 957(c)(1) and (c)(2), the 80/50 conditions should apply only to section 931 corporations. Therefore, the final regulations provide that the special dividend source rules of § 1.937–2(g)(1) (including the 80/50 conditions) will not apply when determining, for purposes of section 957(c)(1), whether a dividend received by the Puerto Rico corporation during the taxable year would be treated under section 933(1) as derived from sources within Puerto Rico. Rather, the principles of section 861(a)(2)(A) under the general territory source rules will apply, and consequently dividends from Puerto Rico corporations generally will be treated as income from sources within Puerto Rico for purposes of applying section 957(c)(1) unless the U.S. income rule prevents the dividends from being sourced to Puerto Rico because, for example, the dividends are from sources within the United States under section 861(a)(2)(B).

The temporary and proposed regulations contain related rules under sections 6038 and 6046 with respect to information reporting requirements concerning certain foreign corporations owned by a United States person who is a bona fide resident of Puerto Rico or a section 931 possession. Under the temporary regulations, the special definition of United States person under

section 957(c) also applies for purposes of sections 6038 and 6046. However, because the final regulations no longer apply the 80/50 conditions to bona fide residents of Puerto Rico (for purposes of subpart F), the Treasury Department and the IRS are concerned that such individuals may no longer have to provide information concerning their controlled foreign corporations, including those formed in Puerto Rico.

The Treasury Department and the IRS believe that the information required under sections 6038 and 6046 is necessary for purposes of determining whether such individuals have a Federal income tax liability. Thus, the final regulations continue to apply the 80/50 conditions of § 1.937–2(g)(1) when defining United States person for purposes of the information reporting requirements under sections 6038 and 6046.

With respect to bona fide residents of a section 931 possession, the final regulations continue to apply the same exception (with the 80/50 conditions) for purposes of section 957(c) and sections 6038 and 6046.

F. Entity Status

With respect to section 935 possessions and the U.S. Virgin Islands (mirror code territories), the temporary and proposed regulations contain special rules requiring consistent treatment of certain business entities for U.S. and mirror code tax purposes. The rules generally apply to elections under section 1362(a) (subchapter S corporations), § 301.7701–3(c) (eligible entities), and other similar elections. The rules provide, among other things, that if an entity files an election with the IRS but not with the relevant mirror code territory, then the appropriate tax authority of the mirror code territory may, at its discretion, deem the election also to have been made for mirror code tax purposes. Similarly, if any such election is filed in a mirror code territory but not with the IRS, the Commissioner may, at his or her discretion, deem the election to have been made for U.S. Federal income tax purposes.

The Treasury Department and the IRS specifically requested comments relating to elections that should be specifically mentioned or excluded from the entity status election rules. Commentators requested two limited exceptions to the requirement for making consistent elections in the case of a U.S. entity that files an election with the IRS but not with the relevant mirror code territory.

The first comment related to a U.S. entity that elects to be treated as a real estate mortgage investment conduit under section 860D(b) (a REMIC) for U.S. tax purposes. The commentator noted that a REMIC would be classified as a foreign corporation for mirror code tax purposes unless it either files an election in the mirror code territory or the appropriate tax authority of the relevant mirror code territory exercises his or her discretion to treat the entity as if an election had been made. The commentator requested that the entity consistency rules be restricted so as not to apply to a publicly traded REMIC unless five percent or more of the REMIC's ownership is held by a bona fide resident of the relevant territory or a corporation created or organized in the relevant territory.

The second comment similarly requested an exception to the consistent election requirement in the case of a U.S. corporation that, prior to the temporary and proposed regulations, made an election with the IRS under section 1362(a) to be an S corporation but had a shareholder who was a bona fide resident of a mirror code territory who treated the entity as a foreign C corporation for purposes of the individual's taxation in the territory. The commentator requested that such individuals be allowed under these circumstances to make a one-time election in the mirror code territory to treat the U.S. entity for purposes of mirror code taxation as either a domestic S corporation or a foreign C corporation (as it would be in the absence of an affirmative election under section 1362(a) by the entity or a deemed election by the mirror code tax authority).

The Treasury Department and the IRS are concerned about the possibility of inappropriate tax results from inconsistent treatment of entities in the United States and mirror code jurisdictions and believe that this problem exists even in circumstances in which the owners of the entity hold less than five percent of the interests in the entity. Furthermore, the Treasury Department and the IRS believe that treating the entity consistently in the territory and the United States should not impose an undue burden on the entity. Thus, the Treasury Department and the IRS do not believe that a special exception in the entity consistency rules is necessary in either case.

As provided in the temporary and proposed regulations, which are finalized here without change, the ability of the tax authority in a mirror code jurisdiction to deem an election to have been made for territorial tax purposes is discretionary. The Treasury Department and the IRS anticipate that, to the extent the entity status rules apply, this discretion will be exercised in situations where taxpayers treat a business entity in an inconsistent manner with the result that it reduces their overall tax liability below what otherwise would be due in the absence of the mirror system. In addition, and as a general matter, the Treasury Department and the IRS encourage taxpayers to take consistent positions in both jurisdictions or, if this is not possible, to seek available administrative assistance from the relevant jurisdiction including, for example, requesting a pre-filing or similar agreement with respect to an entity's classification as well as requesting competent authority assistance concerning any inconsistent positions taken by the IRS and a territory with respect to the entity classification of an entity. See, for example, Rev. Proc. 2007–17 (2007–4 IRB 368) (IRS pre-filing agreement procedures) and Rev. Proc. 2006–23 (2006–1 CB 900) (U.S. competent authority assistance procedures with respect to the territories). See § 601.601(d)(2)(ii)(b).

III. Miscellaneous Changes

The final regulations also reflect various nonsubstantive stylistic edits to the proposed and temporary regulations to enhance clarity and readability.

Effect on Other Documents

Rev. Rul. 56–127 (1956–1 CB 323) is obsolete as of April 9, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is J. David Varley, Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.931–1 also issued under 26 U.S.C. 7654(e).

Section 1.932–1 also issued under 26 U.S.C. 7654(e). * * *

Section 1.934–1 also issued under 26 U.S.C. 934(b)(4). * * *

Section 1.935–1 also issued under 26 U.S.C. 7654(e). * * *

Section 1.937–2 also issued under 26 U.S.C. 937(b).

Section 1.937–3 also issued under 26 U.S.C. 937(b). * * *

Section 1.957–3 also issued under 26 U.S.C. 957(c). * * *

■ **Par. 2.** Section 1.1–1 is amended by revising the second sentence of paragraph (b) and adding a new paragraph (d) to read as follows:

§ 1.1–1 Income tax on individuals.

* * * * *

(b) * * * Pursuant to section 876, a nonresident alien individual who is a bona fide resident of a section 931 possession (as defined in § 1.931–1(c)(1) of this chapter) or Puerto Rico during the entire taxable year is, except as provided in section 931 or 933 with respect to income from sources within such possessions, subject to taxation in the same manner as a resident alien individual. * * *

* * * * *

(d) *Effective/applicability date.* The second sentence of paragraph (b) of this section applies to taxable years ending after April 9, 2008.

■ **Par. 3.** Section 1.170A–1 is amended by revising paragraph (j)(9) and the heading for paragraph (k) and adding a new sentence at the end of paragraph (k) to read as follows:

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

* * * * *

(j)(9) Charitable contributions paid by bona fide residents of a section 931 possession as defined in § 1.931–1(c)(1) or Puerto Rico are deductible only to the extent allocable to income that is not excluded under section 931 or 933. For the rules for allocating deductions for charitable contributions, see the regulations under section 861.

* * * * *

(k) *Effective/applicability date.* * * * Paragraph (j)(9) of this section is applicable for taxable years ending after April 9, 2008.

§ 1.170A–1T [Removed]

■ **Par. 4.** Section 1.170A–1T is removed.

■ **Par. 5.** Section 1.861–3 is amended by revising paragraph (a)(2) and revising the heading for paragraph (d) and adding a new sentence at the end of paragraph (d) to read as follows:

§ 1.861–3 Dividends.

* * * * *

(a) * * *

(2) *Dividend from a domestic corporation.* A dividend described in this paragraph (a)(2) is a dividend from a domestic corporation other than a corporation that has an election in effect under section 936. See paragraph (a)(5) of this section for the treatment of certain dividends from a DISC or former DISC.

* * * * *

(d) *Effective/applicability date.* * * * Paragraph (a)(2) of this section applies to taxable years ending after April 9, 2008.

§ 1.861–3T [Removed]

■ **Par. 6.** Section 1.861–3T is removed.

■ **Par. 7.** Section 1.861–8 is amended by adding paragraphs (f)(1)(vi)(E), (f)(1)(vi)(F), (f)(1)(vi)(H), and (h) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(f) * * *

(1) * * *

(vi) * * *

(E) The tax base for individuals entitled to the benefits of section 931 and the section 936 tax credit of a domestic corporation that has an election in effect under section 936;

(F) The exclusion for income from Puerto Rico for bona fide residents of Puerto Rico under section 933;

* * * * *

(H) The income derived from the U.S. Virgin Islands or from a section 935 possession (as defined in § 1.935–1(a)(3)(i)).

* * * * *

(h) *Effective/applicability date.* Paragraphs (f)(1)(vi)(E), (f)(1)(vi)(F), and (f)(1)(vi)(H) of this section apply to taxable years ending after April 9, 2008.

■ **Par. 8.** Section 1.871–1 is amended by revising paragraph (b)(1)(iii) and revising the heading for paragraph (c) and adding a new sentence at the end of paragraph (c) to read as follows:

§ 1.871–1 Classification and manner of taxing alien individuals.

* * * * *

(b) * * *

(1) * * *

(iii) Nonresident alien individuals who are bona fide residents of a section 931 possession (as defined in § 1.931–1(c)(1) of this chapter) or Puerto Rico during the entire taxable year. An individual described in paragraph (b)(1)(i) or (ii) of this section is subject to tax pursuant to the provisions of subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations under those provisions. The provisions of subpart A do not apply to individuals described in this paragraph (b)(1)(iii), but such individuals, except as provided in section 931 or 933, are subject to the tax imposed by section 1 or 55. See § 1.876–1.

* * * * *

(c) *Effective/applicability date.* * * * Paragraph (b)(1)(iii) of this section applies to taxable years ending after April 9, 2008.

■ **Par. 9.** Section 1.876–1 is revised to read as follows:

§ 1.876–1 Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.

(a) *Scope.* Section 876 and this section apply to any nonresident alien individual who is a bona fide resident of Puerto Rico or of a section 931 possession during the entire taxable year.

(b) *In general.* An individual to whom this section applies is, in accordance with the provisions of section 876, subject to tax under sections 1 and 55 in generally the same manner as an alien resident of the United States. See §§ 1.1–1(b) and 1.871–1. The tax generally is imposed upon the taxable income of such individual, determined in accordance with section 63(a) and the regulations under that section, from sources both within and without the United States, except for amounts excluded from gross income under the provisions of section 931 or 933. For determining the form of return to be

used by such an individual, see section 6012 and the regulations under that section.

(c) *Exceptions*. Though subject to the tax imposed by section 1, an individual to whom this section applies will nevertheless be treated as a nonresident alien individual for the purpose of many provisions of the Internal Revenue Code (Code) relating to nonresident alien individuals. Thus, for example, such an individual is not allowed the standard deduction (section 63(c)(6)); is subject to withholding of tax at source under chapter 3 of the Code (for example, section 1441(e)); is generally excepted from the collection of income tax at source on wages for services performed in the possession (section 3401(a)(6)); is not allowed to make a joint return (section 6013(a)(1)); and, if described in section 6072(c), must pay his first installment of estimated income tax on or before the 15th day of the 6th month of the taxable year (section 6654(j) and (k)) and must pay his income tax on or before the 15th day of the 6th month following the close of the taxable year (sections 6072(c) and 6151(a)). In addition, under section 152(b)(3), an individual is not allowed a deduction for a dependent who is a resident of the relevant possession unless the dependent is a citizen or national of the United States.

(d) *Credits against tax*. (1) Certain credits under the Internal Revenue Code are available to any taxpayer subject to the tax imposed by section 1, including individuals to whom this section applies. For example, except as otherwise provided under section 931 or 933, the credits provided by the following sections are allowable to the extent provided under such sections against the tax determined in accordance with this section—

(i) Section 23 (relating to the credit for adoption expenses);

(ii) Section 31 (relating to the credit for tax withheld on wages);

(iii) Section 33 (relating to the credit for tax withheld at source on nonresident aliens); and

(iv) Section 34 (relating to the credit for certain uses of gasoline and special fuels).

(2) Certain credits under the Internal Revenue Code are not available to nonresident aliens or are subject to limitations based on such factors as principal place of abode in the United States. For example, the credits provided by the following sections are not allowable against the tax determined in accordance with this section except to the extent otherwise provided under such sections—

(i) Section 22 (relating to the credit for the elderly and disabled);

(ii) Section 25A (relating to the Hope Scholarship and Lifetime Learning Credits); and

(iii) Section 32 (relating to the earned income credit).

(e) *Definitions*. For purposes of this section—

(1) ''Bona fide resident'' is defined in § 1.937–1; and

(2) ''Section 931 possession'' is defined in § 1.931–1(c)(1).

(f) *Effective/applicability date*. This section applies to taxable years ending after April 9, 2008.

§ 1.876–1T [Removed]

■ **Par. 10.** Section 1.876–1T is removed.

■ **Par. 11.** Section 1.881–1 is amended by revising the last sentence of paragraph (c) and the heading of paragraph (f) to read as follows:

§ 1.881–1 Manner of taxing foreign corporations.

* * * * *

(c) * * * However, for special rules relating to possessions of the United States, see § 1.881–5.

* * * * *

(f) *Effective/applicability date*. * * *

■ **Par. 12.** Section 1.881–5 is amended as follows:

■ 1. Revise paragraphs (a), (b), (c), (d), (e), (f), (f)(1), (f)(2), (f)(3), (f)(5), (f)(6), (f)(7), (g), (h), and (i).

■ 2. Remove paragraph (f)(8).

The revisions read as follows:

§ 1.881–5 Exception for certain possessions corporations.

(a) *Scope*. Section 881(b) and this section provide special rules for the application of sections 881 and 884 to certain corporations created or organized in possessions of the United States. Paragraph (g) of this section provides special rules for the application of sections 881 and 884 to corporations created or organized in the United States for purposes of determining tax liability incurred to certain possessions that administer income tax laws that are identical (except for the substitution of the name of the possession for the term ''United States'' where appropriate) to those in force in the United States. See § 1.884–0(b) for special rules relating to the application of section 884 with respect to possessions of the United States.

(b) *Operative rules*. (1) Corporations described in paragraphs (c) and (d) of this section are not treated as foreign corporations for purposes of section 881. Accordingly, they are exempt from the tax imposed by section 881(a).

(2) For corporations described in paragraph (e) of this section, the rate of tax imposed by section 881(a) on U.S. source dividends received is 10 percent (rather than the generally applicable 30 percent).

(c) *U.S. Virgin Islands and section 931 possessions*. A corporation created or organized in, or under the law of, the U.S. Virgin Islands or a section 931 possession is described in this paragraph (c) for a taxable year when the following conditions are satisfied—

(1) At all times during such taxable year, less than 25 percent in value of the stock of such corporation is beneficially owned (directly or indirectly) by foreign persons;

(2) At least 65 percent of the gross income of such corporation is shown to the satisfaction of the Commissioner upon examination to be effectively connected with the conduct of a trade or business in such a possession or the United States for the 3-year period ending with the close of the taxable year of such corporation (or for such part of such period as the corporation or any predecessor has been in existence); and

(3) No substantial part of the income of such corporation for the taxable year is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of such a possession or the United States.

(d) *Section 935 possessions*. A corporation created or organized in, or under the law of, a section 935 possession is described in this paragraph (d) for a taxable year when the following conditions are satisfied—

(1) At all times during such taxable year, less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons; and

(2) At least 20 percent of the gross income of such corporation is shown to the satisfaction of the Commissioner upon examination to have been derived from sources within such possession for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence).

(e) *Puerto Rico*. A corporation created or organized in, or under the law of, Puerto Rico is described in this paragraph (e) for a taxable year when the conditions of paragraphs (c)(1) through (c)(3) of this section are satisfied (using the language ''Puerto Rico'' instead of ''such a possession'').

(f) *Definitions and other rules*. For purposes of this section—

(1) ''Section 931 possession'' is defined in § 1.931–1(c)(1);and

(2) ''Section 935'' possession is defined in § 1.935–1(a)(3)(i).

(3) *Foreign person* means any person other than—

(i) A United States person (as defined in section 7701(a)(30) and the regulations under that section); or

(ii) A person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

* * * * *

(5) *Source.* The rules of § 1.937–2 will apply for determining whether income is from sources within a possession.

(6) *Effectively connected income.* The rules of § 1.937–3 (other than paragraph (c) of that section) will apply for determining whether income is effectively connected with the conduct of a trade or business in a possession.

(7) *Indirect ownership.* The rules of section 318(a)(2) will apply except that the language ''5 percent'' will be used instead of ''50 percent'' in section 318(a)(2)(C).

(g) *Mirror code jurisdictions.* For purposes of applying mirrored section 881 to determine tax liability incurred to a section 935 possession or the U.S. Virgin Islands—

(1) The rules of paragraphs (b) through (d) of this section will not apply; and

(2) A corporation created or organized in, or under the law of, such possession or the United States will not be considered a foreign corporation.

(h) *Example.* The principles of this section are illustrated by the following example:

Example. X is a corporation organized under the law of the U.S. Virgin Islands with a branch located in State F. At least 65 percent of the gross income of X is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands and no substantial part of the income of X for the taxable year is used to satisfy obligations to persons who are not bona fide residents of the United States or the U.S. Virgin Islands. Seventy-four percent of the stock of X is owned by unrelated individuals who are residents of the United States or the U.S. Virgin Islands. Y, a corporation organized under the law of State D, and Z, a partnership organized under the law of State F, each own 13 percent of the stock of X. A, an unrelated foreign individual, owns 100 percent of the stock of corporation Y. B and C, unrelated foreign individuals, each own a 50 percent interest in partnership Z. Thus, the condition of paragraph (c)(1) of this section is not satisfied, because 26 percent of X is owned indirectly by foreign persons (A, B, and C). Accordingly, X is treated as a foreign corporation for purposes of section 881.

(i) *Effective/applicability dates.* Except as otherwise provided in this paragraph (i), this section applies to payments made in taxable years ending after April 9, 2008. If, on or after April 9, 2008, there takes effect an increase in the Commonwealth of Puerto Rico's withholding tax generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent, the rules of paragraphs (b)(2) and (e) of this section will not apply to dividends received on or after the effective date of the increase. Paragraph (f)(4) of this section applies to payments made after January 31, 2006. Taxpayers may choose to apply paragraph (f)(4) of this section to payments made after October 22, 2004.

■ **Par. 13.** Section 1.884–0 is amended by revising paragraph (b) to read as follows:

§ 1.884–0 Overview of regulation provisions for section 884.

* * * * *

(b) *Special rules for U.S. possessions.* (1) Section 884 does not apply to a corporation created or organized in, or under the law of, American Samoa, Guam, the Northern Mariana Islands, or the U.S. Virgin Islands, provided that the conditions of § 1.881–5(c)(1) through (c)(3) are satisfied with respect to such corporation. The preceding sentence applies for taxable years ending after April 11, 2005.

(2) Section 884 does not apply for purposes of determining tax liability incurred to a section 935 possession or the U.S. Virgin Islands by a corporation created or organized in, or under the law of, such possession or the United States. The preceding sentence applies for taxable years ending after April 9, 2008.

* * * * *

§ 1.884–0T [Removed]

■ **Par. 14.** Section 1.884–0T is removed.

■ **Par. 15.** Section 1.901–1 is amended by revising paragraph (g) and adding new paragraph (j) to read as follows:

§ 1.901–1 Allowance of credit for taxes.

* * * * *

(g) *Taxpayers to whom credit not allowed.* Among those to whom the credit for taxes is not allowed are the following:

(1) Except as provided in section 906, a foreign corporation.

(2) Except as provided in section 906, a nonresident alien individual who is not described in section 876 (see sections 874(c) and 901(b)(4)).

(3) A nonresident alien individual described in section 876 other than a bona fide resident (as defined in section 937(a) and the regulations under that section) of Puerto Rico during the entire taxable year (see sections 901(b)(3) and (4)).

(4) A U.S. citizen or resident alien individual who is a bona fide resident of a section 931 possession (as defined in § 1.931–1(c)(1)), the U.S. Virgin Islands, or Puerto Rico, and who excludes certain income from U.S. gross income to the extent of taxes allocable to the income so excluded (see sections 931(b)(2), 933(1), and 932(c)(4)).

* * * * *

(j) *Effective/applicability date.* Paragraph (g) of this section applies to taxable years ending after April 9, 2008.

§ 1.901–1T [Removed]

■ **Par. 16.** Section 1.901–1T is removed.

■ **Par. 17.** Section 1.931–1 is revised to read as follows:

§ 1.931–1 Exclusion of certain income from sources within Guam, American Samoa, or the Northern Mariana Islands.

(a) *General rule.* (1) An individual (whether a United States citizen or an alien), who is a bona fide resident of a section 931 possession during the entire taxable year, will exclude from gross income the income derived from sources within any section 931 possession and the income effectively connected with the conduct of a trade or business by such individual within any section 931 possession, except amounts received for services performed as an employee of the United States or any agency thereof. For purposes of section 931(d) and this section, an employee of the government of a section 931 possession will not be considered an employee of the United States or of an agency of the United States.

(2) The following example illustrates the application of the general rule in paragraph (a)(1) of this section:

Example. D, a United States citizen, files returns on a calendar year basis. In April 2008, D moves to American Samoa, where he purchases a house and accepts a permanent position with a local employer. For the remainder of the year and for the following three taxable years, D continues to live and work in American Samoa and has a closer connection to American Samoa than to the United States or any foreign country. Assuming that D otherwise meets the requirements under section 937(a) and § 1.937–1(b) and (f)(1) (year-of-move exception), D is considered a bona fide resident of American Samoa for 2008. Accordingly, under section 931 and paragraph (a)(1) of this section, D should exclude from his 2008 Federal gross income any income from sources within American Samoa and any income that is effectively connected with the conduct of a trade or business within American Samoa, as determined under section 937(b) and §§ 1.937–2 and 1.937–3, as applicable.

(b) *Deductions and credits.* In any case in which any amount otherwise constituting gross income is excluded from gross income under the provisions of section 931, there will not be allowed as a deduction from gross income any items of expenses or losses or other deductions (except the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to, or chargeable against, the amounts so excluded from gross income. For purposes of the preceding sentence, the rules of § 1.861–8 will apply (with creditable expenditures treated in the same manner as deductible expenditures).

(c) *Definitions.* For purposes of this section—

(1) The term *section 931 possession* means a possession that is a specified possession and that has entered into an implementing agreement, as described in section 1271(b) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), with the United States that is in effect for the entire taxable year;

(2) The term *specified possession* means Guam, American Samoa, or the Northern Mariana Islands;

(3) The rules of § 1.937–1 will apply for determining whether an individual is a bona fide resident of a section 931 possession;

(4) The rules of § 1.937–2 will apply for determining whether income is from sources within a section 931 possession; and

(5) The rules of § 1.937–3 will apply for determining whether income is effectively connected with the conduct of a trade or business within a section 931 possession.

(d) *Effective/applicability date.* This section applies to taxable years ending after April 9, 2008.

§ 1.931–1T [Removed]

■ **Par. 18.** Section 1.931–1T is removed.

■ **Par. 19.** Section 1.932–1 is revised to read as follows:

§ 1.932–1 Coordination of United States and Virgin Islands income taxes.

(a) *Scope*—(1) *In general.* Section 932 and this section set forth the special rules relating to the filing of income tax returns and income tax liabilities of individuals described in paragraph (a)(2) of this section. Paragraph (h) of this section also provides special rules requiring consistent treatment of business entities in the United States and in the United States Virgin Islands (Virgin Islands).

(2) *Individuals covered.* This section will apply to any individual who—

(i) Is a bona fide resident of the Virgin Islands during the entire taxable year;

(ii)(A) Is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands) during the entire taxable year; and

(B) Has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within the Virgin Islands, for the taxable year; or

(iii) Files a joint return for the taxable year with any individual described in paragraph (a)(2)(i) or (ii) of this section.

(3) *Definitions.* For purposes of this section—

(i) The rules of § 1.937–1 will apply for determining whether an individual is a bona fide resident of the Virgin Islands;

(ii) The rules of § 1.937–2 will apply for determining whether income is from sources within the Virgin Islands; and

(iii) The rules of § 1.937–3 will apply for determining whether income is effectively connected with the conduct of a trade or business within the Virgin Islands.

(b) *U.S. individuals with Virgin Islands income*—(1) *Dual filing requirement.* Subject to paragraph (d) of this section, an individual described in paragraph (a)(2)(ii) of this section must make an income tax return for the taxable year to the United States and file a copy of such return with the Virgin Islands. Such individuals must also attach Form 8689, ''Allocation of Individual Income Tax to the U.S. Virgin Islands,'' to the U.S. income tax return and to the income tax return filed with the Virgin Islands.

(2) *Tax payments.* (i) Each individual to whom this paragraph (b) applies for the taxable year must pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (b)(2)(ii) of this section) to the Virgin Islands.

(ii) A credit against the tax imposed by this chapter for the taxable year will be allowed in an amount equal to the taxes that are required to be paid to the Virgin Islands under paragraph (b)(2)(i) of this section and are so paid. Such taxes will be considered creditable in the same manner as taxes paid to the United States (for example, under section 31) and not as taxes paid to a foreign government (for example, under sections 27 and 901).

(iii) For purposes of this paragraph (b)(2)—

(A) The term *applicable percentage* means the percentage that Virgin Islands adjusted gross income bears to adjusted gross income;

(B) The term *Virgin Islands adjusted gross income* means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable to such income. For purposes of the preceding sentence, the rules of § 1.861–8 will apply; and

(C) Pursuant to § 1.937–2(a), the rules of § 1.937–2(c)(1)(ii) and (c)(2) do not apply.

(c) *Bona fide residents of the Virgin Islands.* Subject to paragraph (d) of this section, an individual described in paragraph (a)(2)(i) of this section will be subject to the following income tax return filing requirements:

(1) *Virgin Islands filing requirements.* An individual to whom this paragraph (c) applies must file an income tax return for the taxable year with the Virgin Islands. On this return, the individual must report income from all sources and identify the source of each item of income shown on the return.

(2) *U.S. filing requirements.* (i) For purposes of calculating the income tax liability to the United States of an individual to whom this paragraph (c) applies, gross income will not include any amount included in gross income on the return filed with the Virgin Islands pursuant to paragraph (c)(1) of this section, and deductions and credits allocable to such income will not be taken into account, provided that—

(A) The individual fully satisfied the reporting requirements of paragraph (c)(1) of this section; and

(B) The individual fully paid the tax liability referred to in section 934(a) to the Virgin Islands with respect to such income.

(ii) For purposes of the U.S. statute of limitations under section 6501(a), an income tax return filed with the Virgin Islands by an individual who takes the position that he or she is a bona fide resident of the Virgin Islands described in paragraph (a)(2)(i) of this section (or an individual who files a joint return with such an individual under paragraph (d) of this section) will be deemed to be a U.S. income tax return, provided that the United States and the Virgin Islands have entered into an agreement for the routine exchange of income tax information satisfying the requirements of the Commissioner. The working arrangement announced in Notice 2007–31 satisfies the condition of the preceding sentence. See Notice 2007–31 (2007–16 IRB 971) (applicable to taxable years ending on or after December 31, 2006, unless and until arrangement terminates). In the absence of such an agreement, individuals to whom this paragraph (c) applies generally must file an income tax return for the taxable year with the United States to begin the period of limitations

for Federal income tax purposes as provided in section 6501(a), and in such circumstances the Commissioner may by revenue procedure, notice, or other administrative pronouncement specify U.S. filing and other information reporting requirements for such individuals. For taxable years ending before December 31, 2006, the rules provided in section 3 of Notice 2007–19 (2007–11 IRB 689) will apply. See § 601.601(d)(2)(ii)(*b*).

(3) *U.S. tax payments.* In the case of an individual who is required to file an income tax return with the United States as a consequence of failing to satisfy the requirements of paragraphs (c)(2)(i)(A) and (B) of this section, there will be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the amount of the tax liability referred to in section 934(a) to the extent paid to the Virgin Islands. Such taxes shall be considered creditable in the same manner as taxes paid to the United States (for example, under section 31) and not as taxes paid to a foreign government (for example, under sections 27 and 901).

(d) *Joint returns.* In the case of married persons, if one or both spouses is an individual described in paragraph (a)(2) of this section and they file a joint return of income tax, the spouses must file their joint return with, and pay the tax due on such return to, the jurisdiction (or jurisdictions) where the spouse who has the greater adjusted gross income for the taxable year would be required under paragraph (b) or (c) of this section to file a return if separate returns were filed and all of their income were the income of such spouse. For this purpose, adjusted gross income of each spouse is determined under section 62 and the regulations under that section but without regard to community property laws; and, if one of the spouses dies, the taxable year of the surviving spouse will be treated as ending on the date of such death.

(e) *Place for filing returns*—(1) *U.S. returns.* Except as otherwise provided for returns filed under paragraph (c)(4) of this section, a return required under the rules of paragraphs (b) and (c) of this section to be filed with the United States must be filed as directed in the applicable forms and instructions.

(2) *Virgin Islands returns.* A return required under the rules of paragraphs (b) and (c) of this section to be filed with the Virgin Islands must be filed as directed in the applicable forms and instructions.

(f) *Tax accounting standards*—(1) *In general.* A dual filing taxpayer must use the same tax accounting standards on the returns filed with the United States and the Virgin Islands. A taxpayer who has filed a return only with the United States or only with the Virgin Islands as a single filing taxpayer for a prior taxable year and is required to file a return only with the other jurisdiction as a single filing taxpayer for a later taxable year may not, for such later taxable year, use different tax accounting standards unless the second jurisdiction consents to such change. However, such change will not be effective for returns filed thereafter with the first jurisdiction unless before such later date of filing the taxpayer also obtains the consent of the first jurisdiction to make such change. Any request for consent to make a change pursuant to this paragraph (f) must be made to the office where the return is required to be filed under paragraph (e) of this section and in sufficient time to permit a copy of the consent to be attached to the return for the taxable year.

(2) *Definitions.* For purposes of this paragraph (f), the terms—

(i) *Dual filing taxpayer* means a taxpayer who is required to file returns with the United States and the Virgin Islands for the same taxable year under the rules of paragraph (b) or (c) of this section;

(ii) *Single filing taxpayer* means a taxpayer who is required to file a return only with the United States (because the individual is not described in paragraph (a)(2) of this section) or only with the Virgin Islands (because the individual is described in paragraph (a)(2)(i) of this section and satisfies the conditions of paragraphs (c)(2)(i) and (ii) of this section) for the taxable year; and

(iii) *Tax accounting standards* includes the taxpayer's accounting period, methods of accounting, and any election to which the taxpayer is bound with respect to the reporting of taxable income.

(g) *Extension of territory*—(1) *Section 932(a) taxpayers*—(i) *General rule.* With respect to an individual to whom section 932(a) applies for a taxable year, for purposes of taxes imposed by Chapter 1 of the Internal Revenue Code (Code), the United States generally will be treated, in a geographical and governmental sense, as including the Virgin Islands. The purpose of this rule is to facilitate the coordination of the tax systems of the United States and the Virgin Islands. Accordingly, the rule will have no effect where it is manifestly inapplicable or its application would be incompatible with the intent of any provision of the Code.

(ii) *Application of general rule.* Contexts in which the general rule of paragraph (g)(1)(i) of this section apply include—

(A) The characterization of taxes paid to the Virgin Islands. An individual to whom section 932(a) applies may take income tax required to be paid to the Virgin Islands under section 932(b) into account under sections 31, 6315, and 6402(b) as payments to the United States. Taxes paid to the Virgin Islands and otherwise satisfying the requirements of section 164(a) will be allowed as a deduction under that section, but income taxes required to be paid to the Virgin Islands under section 932(b) will be disallowed as a deduction under section 275(a);

(B) The determination of the source of income for purposes of the foreign tax credit (for example, sections 901 through 904). Thus, for example, after an individual to whom section 932(a) applies determines which items of income constitute income from sources within the Virgin Islands under the rules of section 937(b), such income will be treated as income from sources within the United States for purposes of section 904;

(C) The eligibility of a corporation to make a subchapter S election (sections 1361 through 1379). Thus, for example, for purposes of determining whether a corporation created or organized in the Virgin Islands may make an election under section 1362(a) to be a subchapter S corporation, it will be treated as a domestic corporation and a shareholder to whom section 932(a) applies will not be treated as a nonresident alien individual with respect to such corporation. While such an election is in effect, the corporation will be treated as a domestic corporation for all purposes of the Internal Revenue Code. For the consistency requirement with respect to entity status elections, see paragraph (h) of this section;

(D) The treatment of items carried over from other taxable years. Thus, for example, if an individual to whom section 932(a) applies has for a taxable year a net operating loss carryback or carryover under section 172, a foreign tax credit carryback or carryover under section 904, a business credit carryback or carryover under section 39, a capital loss carryover under section 1212, or a charitable contributions carryover under section 170, the carryback or carryover will be reported on the return filed in accordance with paragraph (b)(1) of this section, even though the return of the taxpayer for the taxable year giving rise to the carryback or carryover was required to be filed with the Virgin Islands under section 932(c); and

(E) The treatment of property exchanged for property of a like kind

(section 1031). Thus, for example, if an individual to whom section 932(a) applies exchanges real property located in the United States for real property located in the Virgin Islands, notwithstanding the provisions of section 1031(h), such exchange may qualify as a like-kind exchange under section 1031 (provided that all the other requirements of section 1031 are satisfied).

(iii) *Nonapplication of the general rule.* Contexts in which the general rule of paragraph (g)(1)(i) of this section does not apply include—

(A) The application of any rules or regulations that explicitly treat the United States and any (or all) of its possessions as separate jurisdictions (for example, sections 931 through 937, 7651, and 7654).

(B) The determination of any aspect of an individual's residency (for example, sections 937(a) and 7701(b)). Thus, for example, an individual whose principal place of abode is in the Virgin Islands is not considered to have a principal place of abode in the United States for purposes of section 32(c);

(C) The characterization of a corporation for purposes other than subchapter S (for example, sections 367, 951 through 964, 1291 through 1298, 6038, and 6038B). Thus, for example, if an individual to whom section 932(a) applies transfers appreciated tangible property to a corporation created or organized in the Virgin Islands in a transaction described in section 351, he or she must recognize gain unless an exception under section 367(a) applies. Also, if a corporation created or organized in the Virgin Islands qualifies as a passive foreign investment company under sections 1297 and 1298 with respect to an individual to whom section 932(a) applies, a dividend paid to such shareholder does not constitute qualified dividend income under section 1(h)(11)(B).

(2) *Section 932(c) taxpayers*—(i) *General rule.* With respect to an individual to whom section 932(c) applies for a taxable year, for purposes of the territorial income tax of the Virgin Islands (that is, mirrored sections of the Code), the Virgin Islands generally will be treated, in a geographical and governmental sense, as including the United States. The purpose of this rule is to facilitate the coordination of the tax systems of the United States and the Virgin Islands. Accordingly, the rule will have no effect where it is manifestly inapplicable or its application would be incompatible with the intent of any provision of the Code.

(ii) *Application of general rule.* Contexts in which the general rule of paragraph (g)(2)(i) of this section apply include—

(A) The characterization of taxes paid to the United States. A taxpayer described in section 932(c)(1) may take income tax paid to the United States into account under mirrored sections 31, 6315, and 6402(b) as payments to the Virgin Islands;

(B) The determination of the source of income for purposes of the foreign tax credit (for example, mirrored sections 901 through 904). Thus, for example, any item of income that constitutes income from sources within the United States under the rules of sections 861 through 865 will be treated as income from sources within the Virgin Islands for purposes of mirrored section 904;

(C) The eligibility of a corporation to make a subchapter S election (mirrored sections 1361 through 1379). Thus, for example, for purposes of determining whether a corporation created or organized in the United States may make an election under mirrored section 1362(a) to be a subchapter S corporation, it will be treated as a domestic corporation and a shareholder to whom section 932(c) applies will not be treated as a nonresident alien individual with respect to such corporation. While such an election is in effect, the corporation will be treated as a domestic corporation for all purposes of the territorial income tax. For the consistency requirement with respect to entity status elections, see paragraph (h) of this section;

(D) The treatment of items carried over from other taxable years. Thus, for example, if an individual to whom section 932(c) applies has for a taxable year a net operating loss carryback or carryover under mirrored section 172, a foreign tax credit carryback or carryover under mirrored section 904, a business credit carryback or carryover under mirrored section 39, a capital loss carryover under mirrored section 1212, or a charitable contributions carryover under mirrored section 170, the carryback or carryover will be reported on the return filed in accordance with paragraph (c)(1) of this section, even though the return of the taxpayer for the taxable year giving rise to the carryback or carryover was required to be filed with the United States; and

(E) The treatment of property exchanged for property of a like kind (mirrored section 1031). Thus, for example, if an individual to whom section 932(c) applies exchanges real property located in the United States for real property located in the Virgin Islands, notwithstanding the provisions of mirrored section 1031(h), such exchange may qualify as a like-kind exchange under mirrored section 1031 (provided that all the other requirements of mirrored section 1031 are satisfied).

(iii) *Nonapplication of general rule.* Contexts in which the general rule of paragraph (g)(2)(i) of this section does not apply include—

(A) The determination of any aspect of an individual's residency (for example, mirrored section 7701(b)). Thus, for example, an individual whose principal place of abode is in the United States is not considered to have a principal place of abode in the Virgin Islands for purposes of mirrored section 32(c).

(B) The determination of the source of income for purposes other than the foreign tax credit (for example, sections 932(a) and (b), 934(b), and 937). Thus, for example, compensation for services performed in the United States and rentals or royalties from property located in the United States do not constitute income from sources within the Virgin Islands for purposes of section 934(b); and

(C) The definition of wages (mirrored section 3401). Thus, for example, services performed by an employee for an employer in the United States do not constitute services performed in the Virgin Islands under mirrored section 3401(a)(8).

(h) *Entity status consistency requirement*—(1) *In general.* Taxpayers should make consistent entity status elections (as defined in paragraph (h)(3) of this section), where applicable, in both the United States and the Virgin Islands. In the case of a business entity to which this paragraph (h) applies—

(i) If an entity status election is filed with the Internal Revenue Service (IRS) but not with the Virgin Islands Bureau of Internal Revenue (BIR), the Director of the BIR or his delegate, at his discretion, may deem the election also to have been made for Virgin Islands tax purposes;

(ii) If an entity status election is filed with the BIR but not with the IRS, the Commissioner, at his discretion, may deem the election also to have been made for Federal tax purposes; and

(iii) If inconsistent entity status elections are filed with the BIR and the IRS, both the Commissioner and the Director of the BIR or his delegate may, at their individual discretion, treat the elections they each received as invalid and may deem the election filed in the other jurisdiction to have been made also for tax purposes in their own jurisdiction. See Rev. Proc. 2006–23 (2006–1 CB 900) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for procedures for requesting the assistance

of the IRS when a taxpayer is or may be subject to inconsistent tax treatment by the IRS and a U.S. possession tax agency.

(2) *Scope.* This paragraph (h) applies to the following business entities:

(i) A business entity (as defined in § 301.7701–2(a) of this chapter) that is domestic (as defined in § 301.7701–5 of this chapter), or otherwise treated as domestic for purposes of the Code, and that is owned in whole or in part by any person who is either a bona fide resident of the Virgin Islands or a business entity created or organized in the Virgin Islands.

(ii) A business entity that is created or organized in the Virgin Islands and that is owned in whole or in part by any U.S. person (other than a bona fide resident of the Virgin Islands).

(3) *Definition.* For purposes of this section, the term *entity status election* includes an election under § 301.7701–3(c) of this chapter, an election under section 1362(a), and any other similar elections.

(4) *Default status.* Solely for the purpose of determining classification of an eligible entity under § 301.7701–3(b) of this chapter and under that section as mirrored in the Virgin Islands, an eligible entity subject to this paragraph (h) will be classified for both Federal and Virgin Islands tax purposes using the rule that applies to domestic eligible entities.

(5) *Transition rules*—(i) In the case of an election filed prior to April 11, 2005, except as provided in paragraph (h)(5)(ii) of this section, the rules of paragraph (h)(1) of this section will apply as of the first day of the first taxable year of the entity beginning after April 11, 2005.

(ii) In the unlikely circumstance that inconsistent elections described in paragraph (h)(1)(iii) of this section are filed prior to April 11, 2005, and the entity cannot change its classification to achieve consistency because of the sixty-month limitation described in § 301.7701–3(c)(1)(iv) of this chapter, then the entity may nevertheless request permission from the Commissioner or the Director of the BIR or his delegate to change such election to avoid inconsistent treatment by the Commissioner and the Director of the BIR or his delegate.

(iii) Except as provided in paragraphs (h)(5)(i) and (h)(5)(ii) of this section, in the case of an election filed with respect to an entity before it became an entity described in paragraph (h)(2) of this section, the rules of paragraph (h)(1) of this section will apply as of the first day that such entity is described in paragraph (h)(2) of this section.

(iv) In the case of an entity created or organized prior to April 11, 2005, paragraph (h)(4) of this section will take effect for Federal income tax purposes (or Virgin Islands income tax purposes, as the case may be) as of the first day of the first taxable year of the entity beginning after April 11, 2005.

(i) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) A is a U.S. citizen who resides in State R. For 2008, A files with the IRS a Form 1040, ''U.S. Individual Income Tax Return,'' reporting adjusted gross income of $90x, which includes $30x from sources in the Virgin Islands. The income tax liability reported on A's Form 1040 is $18x. A files a copy of his Form 1040 with the Virgin Islands as required by section 932(a)(2) and paragraph (b)(1) of this section. A pays to the Virgin Islands the applicable percentage of his Federal income tax liability as required by section 932(b) and paragraph (b)(2) of this section, computed as follows: $30x/$90x × $18x = $6x income tax liability to the Virgin Islands.

(ii) A claims a credit in the amount of $6x against his Federal income tax liability reported on his Form 1040. A attaches a Form 8689, ''Allocation of Individual Income Tax to the U.S. Virgin Islands,'' to the Form 1040 filed with the IRS and to the copy filed with the Virgin Islands.

Example 2. (i) B, a U.S. citizen, files returns on a calendar year basis. In November 2008, B moves to the Virgin Islands, purchases a house, and accepts a permanent position with a local employer. For the remainder of the year and throughout 2009, B continues to live and work in the Virgin Islands and has a closer connection to the Virgin Islands than to the United States or any foreign country. As a consequence of his employment in the Virgin Islands, B earns income from the performance of services in the Virgin Islands during 2008 and 2009.

(ii) For 2008, B does not qualify as a bona fide resident under section 937(a) and § 1.937–1(b) and (f)(1). Therefore, B is subject to the rules of sections 932(a) and (b) and paragraph (b) of this section for 2008 because he has income derived from sources within the Virgin Islands as determined under the rules of section 937(b) and § 1.937–2.

(iii) For 2009, assuming that B otherwise satisfies the requirements of section 937(a) and § 1.937–1(b), B qualifies as a bona fide resident of the Virgin Islands. Therefore, section 932(c) and paragraph (c) of this section apply to B for 2009, and he must file his income tax return with the Virgin Islands under paragraph (c)(1) of this section. Provided that B fully satisfies the reporting requirements of paragraph (c)(1) of this section and fully pays the tax liability referred to in section 934(a), B will have no Federal income tax filing requirement or liability under paragraphs (c)(2) and (3) of this section.

Example 3. H and W are U.S. citizens. H resides in State T and W is a bona fide resident of the Virgin Islands. For 2008, H and W prepare a joint Form 1040, ''U.S. Individual Income Tax Return,'' reporting total adjusted gross income of $75x, of which $40x is attributable to compensation that W received for services performed in the Virgin Islands and $35x to compensation that H received for services performed in State T. Pursuant to section 932(d) and paragraph (d) of this section, because W would have the greater adjusted gross income if computed separately, H and W must file their joint Form 1040 with the Virgin Islands as required by section 932(c) and paragraph (c)(1) of this section. H and W may claim a tax credit on such return for income tax withheld during 2008 and paid to the IRS.

Example 4. (i) The facts are the same as in *Example 3*, except that H also earns $25x for services performed in the Virgin Islands, so that H and W's total adjusted gross income is $100x, and their total income tax liability is $20x.

(ii) Pursuant to section 932(d) and paragraph (d) of this section, because H would have the greater adjusted gross income if computed separately, H and W must file their joint Form 1040 with the IRS and must file a copy of that joint Form 1040 with the Virgin Islands as required by section 932(a)(2) and paragraph (b)(1) of this section. H and W must pay the applicable percentage of their Federal income tax liability to the Virgin Islands as required by section 932(b) and paragraph (b)(2) of this section, computed as follows: $65x /$100x × $20x = $13x income tax liability to the Virgin Islands.

(iii) H and W claim a credit against their Federal income tax liability reported on their joint Form 1040 in the amount of $13x, the portion of their Federal income tax liability required to be paid to the Virgin Islands. H and W attach a Form 8689, ''Allocation of Individual Income Tax to the U.S. Virgin Islands,'' to their joint Form 1040 filed with the IRS and to the copy filed with the Virgin Islands.

Example 5. N, a U.S. citizen and calendar year taxpayer, takes the position that he is a bona fide resident of the Virgin Islands for the 2007 taxable year. On April 15, 2008, N files a Form 1040, ''U.S. Individual Income Tax Return,'' with the Virgin Islands for his 2007 taxable year. N does not file a Form 1040 with the IRS. Because there is an agreement in force between the United States and the Virgin Islands for the routine exchange of income tax information, under paragraph (c)(2)(ii) of this section, the Federal 3-year period of limitations under section 6501(a) will expire on April 15, 2011, and the IRS will make no further assessment of income tax after that date for N's 2007 taxable year except as otherwise authorized by section 6501.

Example 6. (i) J is a U.S. citizen and a bona fide resident of the Virgin Islands. In 2008, J receives compensation for services performed as an employee in the Virgin Islands in the amount of $40x. J files with the Virgin Islands a Form 1040, ''U.S. Individual Income Tax Return,'' reporting gross income of only $30x. Based on these facts, J has not satisfied the conditions of section 932(c)(4) and paragraph (c) of this section for an exclusion from gross income for Federal income tax purposes.

(ii) The facts are the same as in paragraph (i) of this *Example 6* except that on or before

the last day prescribed for filing an income tax return for J's 2008 taxable year, J files with the Virgin Islands an amended Form 1040 for 2008, correctly reporting the full $40x of compensation. Provided that J otherwise fully satisfies the reporting requirements of paragraph (c)(1) of this section and fully pays the tax liability referred to in section 934(a), J will have no Federal income tax filing requirement or liability under paragraphs (c)(2) and (3) of this section.

Example 7. (i) N is a U.S. citizen and a bona fide resident of the Virgin Islands. In 2008, N receives compensation for services performed in Country M. N files with the Virgin Islands a Form 1040, ''U.S. Individual Income Tax Return,'' reporting the compensation as income effectively connected with the conduct of a trade or business in the Virgin Islands. N claims a special credit against the tax on this compensation pursuant to a Virgin Islands law enacted within the limits of its authority under section 934.

(ii) Under the principles of section 864(c)(4) as applied pursuant to section 937(b)(1) and § 1.937–3(b), compensation for services performed outside the Virgin Islands may not be treated as income effectively connected with the conduct of a trade or business in the Virgin Islands for purposes of section 934(b). Consequently, N is not entitled to claim the special credit under Virgin Islands law with respect to N's income from services performed in Country M. Because N has not fully paid his tax liability referred to in section 934(a), he has not satisfied the conditions of section 932(c)(4) and paragraph (c) of this section for an exclusion from gross income for Federal income tax purposes. Therefore, income reported on the Form 1040 as filed with the Virgin Islands must be included in N's Federal gross income. Under paragraph (c)(3) of this section, the amount of tax paid to the Virgin Islands on such income will be allowed as a credit against N's Federal income tax liability.

(j) *Effective/applicability date.* Except as otherwise provided in this paragraph (j), this section applies to taxable years ending after April 9, 2008. Taxpayers may choose to apply paragraph (c)(2)(ii) of this section to open taxable years ending on or after December 31, 2006.

§ 1.932–1T [Removed]

■ **Par. 20.** Section 1.932–1T is removed.

■ **Par. 21.** Section 1.933–1 is amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 1.933–1 Exclusion of certain income from sources within Puerto Rico.

(a) *General rule.* (1) An individual (whether a United States citizen or an alien), who is a bona fide resident of Puerto Rico during the entire taxable year, will exclude from gross income the income derived from sources within Puerto Rico, except amounts received for services performed as an employee of the United States or any agency thereof. For purposes of section 933 and this section, an employee of the government of Puerto Rico will not be considered an employee of the United States or of an agency of the United States.

(2) The following example illustrates the application of the general rule in paragraph (a)(1) of this section:

Example. E, a United States citizen, files returns on a calendar year basis. In April 2008, E moves to Puerto Rico, where he purchases a house and accepts a permanent position with a local employer. For the remainder of the year and for the following three taxable years, E continues to live and work in Puerto Rico and has a closer connection to Puerto Rico than to the United States or any foreign country. Assuming that E otherwise meets the requirements under section 937(a) and § 1.937–1(b) and (f)(1) (year-of-move exception), E is considered a bona fide resident of Puerto Rico for 2008. Accordingly, under section 933(1) and paragraph (a)(1) of this section, E should exclude from his 2008 Federal gross income any income from sources within Puerto Rico, as determined under section 937(b) and § 1.937–2.

* * * * *

(c) *Deductions and credits.* In any case in which any amount otherwise constituting gross income is excluded from gross income under the provisions of section 933, there will not be allowed as a deduction from gross income any items of expenses or losses or other deductions (except the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to, or chargeable against, the amounts so excluded from gross income. For purposes of the preceding sentence, the rules of § 1.861–8 will apply (with creditable expenditures treated in the same manner as deductible expenditures).

(d) *Definitions.* For purposes of this section—

(1) The rules of § 1.937–1 will apply for determining whether an individual is a bona fide resident of Puerto Rico; and

(2) The rules of § 1.937–2 will apply for determining whether income is from sources within Puerto Rico.

(e) *Effective/applicability date.* Paragraphs (a), (c), (d), and (e) of this section apply to taxable years ending after April 9, 2008.

§ 1.933–1T [Removed]

■ **Par. 22.** Section 1.933–1T is removed.

■ **Par. 23.** Section 1.934–1 is revised to read as follows:

§ 1.934–1 Limitation on reduction in income tax liability incurred to the Virgin Islands.

(a) *General rule.* Section 934(a) provides that tax liability incurred to the United States Virgin Islands (Virgin Islands) must not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in section 934(b). For purposes of the preceding sentence, the term ''tax liability'' means the liability incurred to the Virgin Islands pursuant to subtitle A of the Internal Revenue Code (Code), as made applicable in the Virgin Islands by the Act of July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1642), as modified by section 7651(5)(B).

(b) *Exception for Virgin Islands income*—(1) *In general.* Section 934(b)(1) provides an exception to the application of section 934(a). Under this exception, section 934(a) does not apply with respect to tax liability incurred to the Virgin Islands to the extent that such tax liability is attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands.

(2) *Limitation.* Section 934(b)(2) limits the scope of the exception provided by section 934(b)(1). Pursuant to this limitation, the exception does not apply with respect to an individual who is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands). For the rules for determining tax liability incurred to the Virgin Islands by such an individual, see section 932(a) and the regulations under that section.

(3) *Computation rule*—(i) *Operative rule.* For purposes of section 934(b)(1) and this paragraph (b), tax liability incurred to the Virgin Islands for the taxable year attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands will be computed as follows:

(A) Add to the income tax liability incurred to the Virgin Islands any credit against the tax allowed under mirrored section 901(a).

(B) Multiply by taxable income from sources within the Virgin Islands and income effectively connected with the conduct of a trade or business within the Virgin Islands (applying the rules of § 1.861–8 to determine deductions allocable to such income).

(C) Divide by total taxable income.

(D) Subtract the portion of any credit allowed under mirrored section 901 (other than credits for taxes paid to the United States) determined by multiplying the amount of taxable income from sources outside the Virgin Islands or the United States that is effectively connected to the conduct of a trade or business in the Virgin Islands divided by the total amount of taxable income from such sources.

(ii) *Limitation*. Tax liability incurred to the Virgin Islands attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands, as computed in this paragraph (b)(3), however, will not exceed the total amount of income tax liability actually incurred.

(4) *Definitions*. For purposes of this section—

(i) *Bona fide resident*. The rules of § 1.937–1 will apply for determining whether an individual is a bona fide resident of the Virgin Islands;

(ii) *Source*. The rules of § 1.937–2 will apply for determining whether income is from sources within the Virgin Islands; and

(iii) *Effectively connected income*. The rules of § 1.937–3 will apply for determining whether income is effectively connected with the conduct of a trade or business in the Virgin Islands.

(c) *Exception for qualified foreign corporations*—(1) *In general*. Section 934(b)(3) provides an exception to the application of section 934(a). Under this exception, section 934(a) does not apply with respect to tax liability incurred to the Virgin Islands by a qualified foreign corporation to the extent that such tax liability is attributable to income that is derived from sources outside the United States and that is not effectively connected with the conduct of a trade or business within the United States.

(2) *Qualified foreign corporation*. For purposes of paragraph (c)(1) of this section, the term *qualified foreign corporation* means any foreign corporation if 1 or more United States persons own or are treated as owning (within the meaning of section 958) less than 10 percent of—

(i) The total voting power of the stock of such corporation; and

(ii) The total value of the stock of such corporation.

(3) *Computation rule*—(i) *Operative rule*. For purposes of section 934(b)(3) and this paragraph (c), tax liability incurred to the Virgin Islands for the taxable year attributable to income that is derived from sources outside the United States and that is not effectively connected with the conduct of a trade or business within the United States will be computed as follows:

(A) Add to the income tax liability incurred to the Virgin Islands any credit against the tax allowed under mirrored section 901(a).

(B) Multiply by taxable income that is derived from sources outside the United States and that is not effectively connected with the conduct of a trade or business within the United States (applying the rules of § 1.861–8 to determine deductions allocable to such income).

(C) Divide by total taxable income.

(D) Subtract any credit allowed under mirrored section 901 (other than credits for taxes paid to the United States or taxes for which a credit is allowable for Federal income tax purposes under section 906 of the Code).

(ii) *Limitation*. Tax liability incurred to the Virgin Islands attributable to income that is derived from sources outside the United States and that is not effectively connected with the conduct of a trade or business within the United States, as computed in this paragraph (c)(3), however, will not exceed the total amount of income tax liability actually incurred.

(4) *U.S. income*—(i) *In general*. For purposes of this section, except as provided in paragraph (c)(4)(ii) of this section, the rules of sections 861 through 865 and the regulations under those provisions will apply for determining whether income is from sources outside the United States or effectively connected with the conduct of a trade or business within the United States.

(ii) *Conduit arrangements*. Income will be considered to be from sources within the United States for purposes of paragraph (c)(1) of this section if, pursuant to a plan or arrangement—

(A) The income is received in exchange for consideration provided to another person; and

(B) Such person (or another person) provides the same consideration (or consideration of a like kind) to a third person in exchange for one or more payments constituting income from sources within the United States.

(d) *Examples*. The rules of this section are illustrated by the following examples:

Example 1. (i) S is a U.S. citizen and a bona fide resident of the Virgin Islands. For 2008, S files a Form 1040INFO, ''Non-Virgin Islands Source Income of Virgin Islands Residents,'' with the Virgin Islands on which S reports total gross income as follows:

Compensation for services performed in the Virgin Islands—$50,000
Compensation for services performed in the United States—$40,000
Compensation for services performed in Mexico—$30,000
Income from inventory sales in Latin America attributable to Virgin Islands office—$20,000
Interest on a U.S. bank account—$6,000
Interest on a V.I. bank account—$5,000
Dividends from a U.S. corporation—$4,000

(ii) Accordingly, S has total gross income of $155,000, comprising income from sources within the Virgin Islands or effectively connected to the conduct of a trade or business in the Virgin Islands (Virgin Islands ECI) of $75,000, income from sources within the United States of $50,000, and income from other sources (not Virgin Islands ECI) of $30,000. After taking into account allowable deductions, S's total taxable income is $120,000, of which $45,000 is taxable income from sources within the Virgin Islands, $15,000 is taxable income from other sources that is Virgin Islands ECI under the rules of section 937(b) and §§ 1.937–2 and 1.937–3, and $22,500 is taxable income from sources outside the Virgin Islands (and outside the United States) that is not Virgin Islands ECI. S's tax liability incurred to the Virgin Islands pursuant to the Internal Revenue Code as applicable in the Virgin Islands (mirror code) is $30,000. S is entitled to claim a credit under section 901 of the mirror code in the amount of $10,000 for income tax paid to Mexico and other Latin American countries, for a net income tax liability of $20,000.

(iii) Pursuant to a Virgin Islands law that was duly enacted within the limits of its authority under section 934, S may claim a special deduction relating to his business activities in the Virgin Islands. However, under section 934(b), S's ability to claim this special deduction is limited. Specifically, the maximum amount of the reduction in S's mirror code tax liability that may result from claiming this deduction, computed in accordance with paragraph (b)(3) of this section, is as follows: $[(\$20{,}000 + \$10{,}000) \times ((\$45{,}000 + \$15{,}000) / \$120{,}000)] - [\$10{,}000 \times (\$15{,}000 / (\$15{,}000 + \$22{,}500))] = [\$30{,}000 \times (\$60{,}000 / \$120{,}000)] - [\$10{,}000 \times (\$15{,}000 / \$37{,}500)] = (\$30{,}000 \times 0.5) - (\$10{,}000 \times 0.4) = \$15{,}000 - \$4{,}000 = \$11{,}000$

(iv) Accordingly, S's net tax liability incurred to the Virgin Islands must be at least $19,000 ($30,000 − $11,000), prior to taking into account any foreign tax credit.

Example 2. The facts are the same as *Example 1*, except that S is a U.S. citizen who resides in the United States. As required by section 932(a) and (b), S files with the Virgin Islands a copy of his Federal income tax return and pays to the Virgin Islands the portion of his Federal income tax liability that his Virgin Islands adjusted gross income bears to his adjusted gross income. Under section 934(b)(2), S may not claim the special deduction offered under Virgin Islands law relating to business activities like his in the Virgin Islands to reduce any of his tax liability payable to the Virgin Islands under section 932(b).

Example 3. (i) Z is a nonresident alien who resides in Country FC. In 2008, Z receives dividends from a corporation organized under the law of the Virgin Islands in the amount of $90x. Z's tax liability incurred to the Virgin Islands pursuant to section 871(a)

of the Code as applicable in the Virgin Islands (mirror code) is $27x.

(ii) Pursuant to a Virgin Islands law that was duly enacted within the limits of its authority under section 934, Z may claim a special exemption for income relating to his investment in the Virgin Islands. The maximum amount of the reduction in Z's mirror code tax liability that may result from claiming this exemption, computed in accordance with paragraph (b)(3) of this section, is as follows: $27x × ($90x/$90x) = $27x.

(iii) Accordingly, depending on the terms of the exemption as provided under Virgin Islands law, Z's net tax liability incurred to the Virgin Islands may be reduced or eliminated entirely.

Example 4. (i) A Corp is organized under the laws of the Virgin Islands and is engaged in a trade or business in the United States through an office in State N. All of A Corp's outstanding stock is owned by U.S. citizens who are bona fide residents of the Virgin Islands. During 2008, A Corp had $50x in gross income from sources within the Virgin Islands (as determined under section 937(b) and § 1.937–2) that is not effectively connected with the conduct of a trade or business in the United States; $20x in gross income from sources in Country H that is effectively connected with the conduct of A Corp's trade or business in the United States; and $10x in gross income from sources in Country R that is not effectively connected with the conduct of A Corp's trade or business in the United States.

(ii) Section 934(b)(3) permits the Virgin Islands to reduce or remit the income tax liability of a qualified foreign corporation arising under the Code as applicable in the Virgin Islands (mirror code) with respect to income that is derived from sources outside the United States and that is not effectively connected with the conduct of a trade or business in the United States. A foreign corporation constitutes a ''qualified foreign corporation'' under section 934(b)(3)(B) if less than 10 percent of the total voting power and value of the stock of the corporation is owned or treated as owned (within the meaning of section 958) by one or more United States persons. A U.S. citizen is a ''United States person'' as defined in section 7701(a)(30)(A). Given that 10 percent or more of the voting power and value of its stock is owned by U.S. citizens, A Corp does not constitute a ''qualified foreign corporation'' under section 934(b)(3)(B). Accordingly, the Virgin Islands may only reduce or remit A Corp's mirror code income tax liability with respect to its $50x in gross income from sources within the Virgin Islands.

Example 5. (i) The facts are the same as in *Example 4,* except that the outstanding stock of A Corp is owned by the following individuals:

U.S. citizens who are bona fide residents of the Virgin Islands—5%
U.S. citizens who are not bona fide residents of the Virgin Islands—3%
Nonresident aliens who are bona fide residents of the Virgin Islands—42%
Nonresident aliens who are not bona fide residents of the Virgin Islands—50%

(ii) Given that less than 10 percent of the voting power and value of its stock is owned by United States persons, A Corp constitutes a qualified foreign corporation under section 934(b)(3)(B). Accordingly, the Virgin Islands may reduce or remit A Corp's mirror code income tax liability with respect to its $50x in gross income from sources within the Virgin Islands and its $10x in gross income from sources in Country R that is not effectively connected with the conduct of A Corp's trade or business in the United States. In no event, however, may the Virgin Islands reduce or remit A Corp's mirror code income tax liability with respect to its $20x in gross income from sources in Country H that is effectively connected with the conduct of A Corp's trade or business in the United States.

(e) *Effective/applicability date.* This section applies for taxable years ending after April 9, 2008.

§ 1.934–1T [Removed]

■ **Par. 24.** Section 1.934–1T is removed.

■ **Par. 25.** Section 1.935–1 is amended by revising paragraphs (a), (b)(1), (b)(3), (b)(5), (b)(6), (b)(7), (c), (d), (e), (f), and (g) to read as follows:

§ 1.935–1 Coordination of individual income taxes with Guam and the Northern Mariana Islands.

(a) *Application of section*—(1) *Scope.* Section 935 and this section set forth the special rules relating to the filing of income tax returns, income tax liabilities, and estimated income tax of individuals described in paragraph (a)(2) of this section. Paragraph (e) of this section also provides special rules requiring consistent treatment of business entities in the United States and in section 935 possessions.

(2) *Individuals covered.* This section applies to any individual who—

(i) Is a bona fide resident of a section 935 possession during the entire taxable year, whether or not such individual is a citizen of the United States or a resident alien (as defined in section 7701(b)(1)(A));

(ii) Is a citizen of a section 935 possession but not otherwise a citizen of the United States;

(iii) Has income from sources within a section 935 possession for the taxable year, is a citizen of the United States or a resident alien (as defined in section 7701(b)(1)(A)) and is not a bona fide resident of a section 935 possession during the entire taxable year; or

(iv) Files a joint return for the taxable year with any individual described in paragraph (a)(2)(i), (ii), or (iii) of this section.

(3) *Definitions.* For purposes of this section, the following definitions apply:

(i) The term *section 935 possession* means Guam or the Northern Mariana Islands, unless such possession has entered into an implementing agreement, as described in section 1271(b) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), with the United States that is in effect for the entire taxable year.

(ii) The term *relevant possession* means—

(A) With respect to an individual described in paragraph (a)(2)(i) of this section, the section 935 possession of which such individual is a bona fide resident;

(B) With respect to an individual described in paragraph (a)(2)(ii) of this section, the section 935 possession of which such individual is a citizen; and

(C) With respect to an individual described in paragraph (a)(2)(iii) of this section, the section 935 possession from which such individual derives income.

(iii) The rules of § 1.937–1 will apply for determining whether an individual is a bona fide resident of a section 935 possession.

(iv) The rules of § 1.937–2 generally will apply for determining whether income is from sources within a section 935 possession. Pursuant to § 1.937–2(a), however, the rules of § 1.937–2(c)(1)(ii) and (c)(2) do not apply for purposes of section 935(a)(3) (as in effect before the effective date of its repeal) and paragraph (a)(2)(iii) of this section.

(v) The term *citizen of the United States* means any individual who is a citizen within the meaning of § 1.1–1(c), except that the term does not include an individual who is a citizen of a section 935 possession but not otherwise a citizen of the United States. The term *citizen of a section 935 possession but not otherwise a citizen of the United States* means any individual who has become a citizen of the United States by birth or naturalization in the section 935 possession.

(vi) With respect to the United States, the term *resident* means an individual who is a citizen (as defined in § 1.1–1(c)) or resident alien (as defined in section 7701(b)) and who does not have a tax home (as defined in section 911(d)(3)) in a foreign country during the entire taxable year. The term does not include an individual who is a bona fide resident of a section 935 possession.

(vii) The term *U.S. taxpayer* means an individual described in paragraph (b)(1)(i) or (iii)(B) of this section.

(b) *Filing requirement*—(1) *Tax jurisdiction.* An individual described in paragraph (a)(2) of this section must file an income tax return for the taxable year—

(i) With the United States if such individual is a resident of the United States;

(ii) With the relevant possession if such individual is described in paragraph (a)(2)(i) of this section; or

(iii) If neither paragraph (b)(1)(i) nor paragraph (b)(1)(ii) of this section applies—

(A) With the relevant possession if such individual is described in paragraph (a)(2)(ii) of this section; or

(B) With the United States if such individual is a citizen of the United States, as defined in paragraph (a)(3) of this section.

* * * * *

(3) *Place for filing returns*—(i) *U.S. returns.* A return required under this paragraph (b) to be filed with the United States must be filed as directed in the applicable forms and instructions.

(ii) *Guam returns.* A return required under this paragraph (b) to be filed with Guam must be filed as directed in the applicable forms and instructions.

(iii) *NMI returns.* A return required under this paragraph (b) to be filed with the Northern Mariana Islands must be filed as directed in the applicable forms and instructions.

* * * * *

(5) *Tax payments.* The tax shown on the return must be paid to the jurisdiction with which such return is required to be filed and must be determined by taking into account any credit under section 31 for tax withheld by the relevant possession or the United States on wages, any credit under section 6402(b) for an overpayment of income tax to the relevant possession or the United States, and any payments under section 6315 of estimated income tax paid to the relevant possession or the United States.

(6) *Liability to other jurisdiction*—(i) *Filing with the relevant possession.* In the case of an individual who is required under paragraph (b)(1) of this section to file a return with the relevant possession for a taxable year, if such individual properly files such return and fully pays his or her income tax liability to the relevant possession, such individual is relieved of liability to file an income tax return with, and to pay an income tax to, the United States for the taxable year.

(ii) *Filing with the United States.* In the case of an individual who is required under paragraph (b)(1) of this section to file a return with the United States for a taxable year, such individual is relieved of liability to file an income tax return with, and to pay an income tax to, the relevant possession for the taxable year.

(7) [Reserved].

(c) *Extension of territory*—(1) *U.S. taxpayers*—(i) *General rule.* With respect to a U.S. taxpayer, for purposes of taxes imposed by Chapter 1 of the Internal Revenue Code (Code), the United States generally will be treated, in a geographical and governmental sense, as including the relevant possession. The purpose of this rule is to facilitate the coordination of the tax systems of the United States and the relevant possession. Accordingly, the rule will have no effect where it is manifestly inapplicable or its application would be incompatible with the intent of any provision of the Code.

(ii) *Application of general rule.* Contexts in which the general rule of paragraph (c)(1)(i) of this section apply include—

(A) The characterization of taxes paid to the relevant possession. Income tax paid to the relevant possession may be taken into account under sections 31, 6315, and 6402(b) as payments to the United States. Taxes paid to the relevant possession and otherwise satisfying the requirements of section 164(a) will be allowed as a deduction under that section, but income taxes paid to the relevant possession will be disallowed as a deduction under section 275(a);

(B) The determination of the source of income for purposes of the foreign tax credit (for example, sections 901 through 904). Thus, for example, after a U.S. taxpayer determines which items of income constitute income from sources within the relevant possession under the rules of section 937(b), such income will be treated as income from sources within the United States for purposes of section 904;

(C) The eligibility of a corporation to make a subchapter S election (sections 1361 through 1379). Thus, for example, for purposes of determining whether a corporation created or organized in the relevant possession may make an election under section 1362(a) to be a subchapter S corporation, it will be treated as a domestic corporation and a U.S. taxpayer shareholder will not be treated as a nonresident alien individual with respect to such corporation. While such an election is in effect, the corporation will be treated as a domestic corporation for all purposes of the Code. For the consistency requirement with respect to entity status elections, see paragraph (e) of this section;

(D) The treatment of items carried over from other taxable years. Thus, for example, if a U.S. taxpayer has for a taxable year a net operating loss carryback or carryover under section 172, a foreign tax credit carryback or carryover under section 904, a business credit carryback or carryover under section 39, a capital loss carryover under section 1212, or a charitable contributions carryover under section 170, the carryback or carryover will be reported on the return filed with the United States in accordance with paragraph (b)(1)(i) or (b)(1)(iii)(B) of this section, even though the return of the taxpayer for the taxable year giving rise to the carryback or carryover was required to be filed with a section 935 possession; and

(E) The treatment of property exchanged for property of a like kind (section 1031). Thus for example, if a U.S. taxpayer exchanges real property located in the United States for real property located in the relevant possession, notwithstanding the provisions of section 1031(h), such exchange may qualify as a like-kind exchange under section 1031 (provided that all the other requirements of section 1031 are satisfied).

(iii) *Nonapplication of general rule.* Contexts in which the general rule of paragraph (c)(1)(i) of this section does not apply include—

(A) The application of any rules or regulations that explicitly treat the United States and any (or all) of its possessions as separate jurisdictions (for example, sections 931 through 937, 7651, and 7654);

(B) The determination of any aspect of an individual's residency (for example, sections 937(a) and 7701(b)). Thus, for example, an individual whose principal place of abode is in the relevant possession is not considered to have a principal place of abode in the United States for purposes of section 32(c);

(C) The determination of the source of income for purposes other than the foreign tax credit (for example, sections 935, 937, and 7654). Thus, for example, income determined to be derived from sources within the relevant possession under section 937(b) will not be considered income from sources within the United States for purposes of Form 5074, ''Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI)'';

(D) The definition of wages (section 3401). Thus, for example, services performed by an employee for an employer in the relevant possession do not constitute services performed in the United States under section 3401(a)(8); and

(E) The characterization of a corporation for purposes other than subchapter S (for example, sections 367, 951 through 964, 1291 through 1298, 6038, and 6038B). Thus, for example, if a U.S. taxpayer transfers appreciated tangible property to a corporation created or organized in the relevant possession in a transaction described in section 351, he or she must recognize

gain unless an exception under section 367(a) applies. Also, if a corporation created or organized in the relevant possession qualifies as a passive foreign investment company under sections 1297 and 1298 with respect to a U.S. taxpayer, a dividend paid to such shareholder does not constitute qualified dividend income under section 1(h)(11)(B).

(2) *Application in relevant possession.* In applying the territorial income tax of the relevant possession, such possession generally will be treated, in a geographical and governmental sense, as including the United States. Thus, for example, income tax paid to the United States may be taken into account under sections 31, 6315, and 6402(b) as payments to the relevant possession. Moreover, a citizen of the United States (as defined in paragraph (a)(3) of this section) not a resident of the relevant possession will not be treated as a nonresident alien individual for purposes of the territorial income tax of the relevant possession. Thus, for example, a citizen of the United States (as so defined), or a resident of the United States, will not be treated as a nonresident alien individual for purposes of section 1361(b)(1)(C) of the Guam territorial income tax.

(d) *Special rules for estimated income tax*—(1) *In general.* An individual must make each payment of estimated income tax (and any amendment to the estimated tax payment) to the jurisdiction with which the individual reasonably believes, as of the date of that payment (or amendment), that he or she will be required to file a return for the taxable year under paragraph (b)(1) of this section. In determining the amount of such estimated income tax, income tax paid to the relevant possession may be taken into account under sections 31 and 6402(b) as payments to the United States, and vice versa. For other rules relating to estimated income tax, see section 6654.

(2) *Joint estimated income tax.* In the case of married persons making a joint payment of estimated income tax, the taxpayers must make each payment of estimated income tax (and any amendment to the estimated tax payment) to the jurisdiction where the spouse who has the greater estimated adjusted gross income for the taxable year would be required under paragraph (d)(1) of this section to pay estimated income tax if separate payments were made. For this purpose, estimated adjusted gross income of each spouse for the taxable year is determined without regard to community property laws.

(3) *Erroneous payment.* If the individual or spouses erroneously pay estimated income tax to the United States instead of the relevant possession or vice versa, only subsequent payments or amendments of the payments are required to be made pursuant to paragraph (d)(1) or (d)(2) of this section with the other jurisdiction.

(4) *Place for payment.* Estimated income tax required under this paragraph (d) to be paid to Guam or the Northern Mariana Islands must be paid as directed in the applicable forms and instructions issued by the relevant possession. Estimated income tax required under paragraph (d)(1) of this section to be paid to the United States must be paid as directed in the applicable forms and instructions.

(5) *Liability to other jurisdiction*—(i) *Filing with Guam or the Northern Mariana Islands.* Subject to paragraph (d)(6) of this section, an individual required under this paragraph (d) to pay estimated income tax (and amendments thereof) to Guam or the Northern Mariana Islands is relieved of liability to pay estimated income tax (and amendments thereof) to the United States.

(ii) *Filing with the United States.* Subject to paragraph (d)(6) of this section, an individual required under this paragraph (d) to pay estimated income tax (and amendments thereof) to the United States is relieved of liability to pay estimated income tax (and amendments thereof) to the relevant possession.

(6) *Underpayments.* The liability of an individual described in paragraph (a)(2) of this section for underpayments of estimated income tax for a taxable year, as determined under section 6654, will be to the jurisdiction with which the individual is required under paragraph (b) of this section to file his or her return for the taxable year.

(e) *Entity status consistency requirement*—(1) *In general.* Taxpayers should make consistent entity status elections (as defined in paragraph (e)(3)(ii) of this section), when applicable, in both the United States and section 935 possessions. In the case of a business entity to which this paragraph (e) applies—

(i) If an entity status election is filed with the Internal Revenue Service (IRS) but not with the relevant possession, the appropriate tax authority of the relevant possession, at his discretion, may deem the election also to have been made for the relevant possession tax purposes;

(ii) If an entity status election filed with the relevant possession but not with the IRS, the Commissioner, at his discretion, may deem the election also to have been made for Federal tax purposes; and

(iii) If inconsistent entity status elections are filed with the relevant possession and the IRS, both the Commissioner and the appropriate tax authority of the relevant possession may, at their individual discretion, treat the elections they each received as invalid and may deem the election filed in the other jurisdiction to have been made also for tax purposes in their own jurisdiction. See Rev. Proc. 2006–23 (2006–1 C.B. 900) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for procedures for requesting the assistance of the IRS when a taxpayer is or may be subject to inconsistent tax treatment by the IRS and a U.S. possession tax agency.)

(2) *Scope.* This paragraph (e) applies to the following business entities:

(i) A business entity (as defined in § 301.7701–2(a) of this chapter) that is domestic (as defined in § 301.7701–5 of this chapter), or otherwise treated as domestic for purposes of the Code, and that is owned in whole or in part by any person who is either a bona fide resident of a section 935 possession or a business entity created or organized in a section 935 possession.

(ii) A business entity that is created or organized in a section 935 possession and that is owned in whole or in part by any U.S. person (other than a bona fide resident of such possession).

(3) *Definitions.* For purposes of this section—

(i) The term *appropriate tax authority of the relevant possession* means the individual responsible for tax administration in such possession or his delegate; and

(ii) The term *entity status election* includes an election under § 301.7701–3(c) of this chapter, an election under section 1362(a), and any other similar elections.

(4) *Default status.* Solely for the purpose of determining classification of an eligible entity under § 301.7701–3(b) of this chapter and under that section as mirrored in the relevant possession, an eligible entity subject to this paragraph (e) will be classified for both Federal and the relevant possession tax purposes using the rule that applies to domestic eligible entities.

(5) *Transition rules*—(i) In the case of an election filed prior to April 11, 2005, except as provided in paragraph (e)(5)(ii) of this section, the rules of paragraph (e)(1) of this section will apply as of the first day of the first taxable year of the entity beginning after April 11, 2005.

(ii) In the unlikely circumstance that inconsistent elections described in

paragraph (e)(1)(iii) of this section are filed prior to April 11, 2005, and the entity cannot change its classification to achieve consistency because of the sixty-month limitation described in § 301.7701–3(c)(1)(iv) of this chapter, then the entity may nevertheless request permission from the Commissioner or appropriate tax authority of the relevant possession to change such election to avoid inconsistent treatment by the Commissioner and the appropriate tax authority of the relevant possession.

(iii) Except as provided in paragraphs (e)(5)(i) and (e)(5)(ii) of this section, in the case of an election filed with respect to an entity before it became an entity described in paragraph (e)(2) of this section, the rules of paragraph (e)(1) of this section will apply as of the first day that such entity is described in paragraph (e)(2) of this section.

(iv) In the case of an entity created or organized prior to April 11, 2005, paragraph (e)(4) of this section will take effect for Federal income tax purposes (or the relevant possession income tax purposes, as the case may be) as of the first day of the first taxable year of the entity beginning after April 11, 2005.

(f) *Examples.* The application of this section is illustrated by the following examples:

Example 1. (i) B, a United States citizen, files returns on a calendar year basis. In November 2008, B moves to Possession G, a section 935 possession; purchases a house; and accepts a permanent position with a local employer. For the remainder of the year and throughout 2009, B continues to live and work in Possession G and has a closer connection to Possession G than to the United States or any foreign country. As a consequence of his employment in Possession G, B earns income from the performance of services in Possession G during 2008 and 2009.

(ii) For 2008, B does not qualify as a bona fide resident of Possession G under section 937(a) and § 1.937–1(b) and (f)(1). Therefore, B is subject to the rules applicable to individuals described in paragraph (a)(2)(iii) of this section for 2008 because he has income derived from sources within Possession G as determined under the rules of section 937(b) and § 1.937–2.

(iii) For 2009, assuming that B otherwise satisfies the requirements of section 937(a) and § 1.937–1(b), B qualifies as a bona fide resident of Possession G. Therefore, section 935(b)(1)(B) and paragraph (b)(1)(ii) of this section apply to B for 2009, and he must file his income tax return with Possession G under paragraph (b)(1) of this section. Provided that B properly files such return and pays his income tax liability to Possession G, B is relieved of liability to file an income tax return with, and to pay an income tax to, the United States for 2009 under paragraph (b)(6) of this section.

Example 2. (i) The facts are the same as in Example 1 except that B's employment terminates in June 2011. B properly pays his April 2008 estimated tax to the United States, continues to pay estimated tax for the 2008 taxable year to the United States under paragraph (d) of this section, and properly files his 2008 return with the United States.

(ii)(A) On the date of each payment of estimated tax in 2009, B reasonably believes that he would be required to file his return for 2009 with Possession G under paragraph (b)(1) of this section.

(B) In August 2009, B determines that he has overpaid tax for the previous year in the amount of $1000. B properly pays all estimated taxes to Possession G for 2009, subtracting the $1000 overpayment from his estimated tax payments pursuant to section 6402(b), and properly files his tax return with Possession G.

(iii) In April 2010, B reasonably believes that he would be returning to the United States in the Fall of 2010, and properly pays estimated tax to the United States. By June 2010, B reasonably believes that he would not be moving from Possession G and would be a bona fide resident of Possession G for the entire taxable year. B makes his remaining estimated tax payments to Possession G. On his 2010 tax return filed with Possession G, pursuant to section 6315, B properly takes into account payments made to both the United States and Possession G as estimated taxes.

(iv) In April 2011, B reasonably believes that he would be a bona fide resident of Possession G for the entire taxable year 2011 and properly pays estimated taxes to Possession G. By the time B pays his estimated taxes for June 2011, B's employment terminates and he moves to State H. B properly makes his remaining estimated tax payments to the United States. On his return for 2011, properly filed with the United States, B determines that he has underpaid estimated taxes throughout 2011 in an amount subject to penalty under section 6654. B owes the United States an estimated tax penalty under section 6654.

(g) *Effective/applicability date.* Paragraphs (a), (b)(1), (b)(3), (b)(5) through (b)(7), and (c) through (f) of this section apply to taxable years ending after April 9, 2008.

§ 1.935–1T [Removed]

■ **Par. 26.** Section 1.935–1T is removed.

■ **Par. 27.** Section 1.937–1 is amended by revising paragraph (h)(3) and the heading of paragraph (i) to read as follows:

§ 1.937–1 Bona fide residency in a possession.

* * * * *

(h)(3) Bona fide residents of Puerto Rico or a section 931 possession (as defined in § 1.931–1(c)(1)) who take a position for U.S. tax reporting purposes that they qualify as bona fide residents of that possession for a tax year subsequent to a tax year for which they were required to file income tax returns as bona fide residents of the U.S. Virgin Islands or a section 935 possession (as defined in § 1.935–1(a)(3)(i)).

(i) *Effective/applicability date.* * * *

■ **Par. 28.** Section 1.937–2 is added to read as follows:

§ 1.937–2 Income from sources within a possession.

(a) *Scope.* Section 937(b) and this section set forth the rules for determining whether income is considered to be from sources within a particular possession (the relevant possession) for purposes of the Internal Revenue Code, including section 957(c) and Subpart D, Part III, Subchapter N, Chapter 1 of the Internal Revenue Code, as well as section 7654(a) of the 1954 Internal Revenue Code (until the effective date of its repeal). Paragraphs (c)(1)(ii) and (c)(2) of this section do not apply, however, for purposes of sections 932(a) and (b) and 935(a)(3) (as in effect before the effective date of its repeal). In the case of a possession or territory that administers income tax laws that are identical (except for the substitution of the name of the possession or territory for the term ''United States'' where appropriate) to those in force in the United States, these rules do not apply for purposes of the application of such laws. These rules also do not affect the determination of whether income is considered to be from sources without the United States for purposes of the Internal Revenue Code.

(b) *In general.* Except as provided in paragraphs (c) through (i) of this section, the principles of sections 861 through 865 and the regulations under those provisions (relating to the determination of the gross and the taxable income from sources within and without the United States) generally will be applied in determining the gross and the taxable income from sources within and without the relevant possession. In the application of such principles, it generally will be sufficient to substitute, where appropriate, the name of the relevant possession for the term ''United States,'' and to substitute, where appropriate, the term ''bona fide resident of'' followed by the name of the relevant possession for the term ''United States resident.'' Furthermore, the term *domestic* will be construed to mean created or organized in the relevant possession. In applying these principles, additional substitutions may be necessary to accomplish the intent of section 937(b) and this section. For example, in applying the principles of sections 863(d) and (e) to individuals under this paragraph (b), the term ''bona fide resident of a possession'' will be used instead of the term ''United States person.'' In no case, however, will a

bona fide resident or other person have, as a result of the application of these principles, more income from sources within the relevant possession than the amount of income from sources within the United States that a similarly situated U.S. person who is not a bona fide resident would have under sections 861 through 865.

(c) *U.S. income*—(1) *In general.* Except as provided in paragraph (d) of this section, income from sources within the relevant possession will not include any item of income determined under the rules of sections 861 through 865 and the regulations under those provisions to be—

(i) From sources within the United States; or

(ii) Effectively connected with the conduct of a trade or business within the United States.

(2) *Conduit arrangements.* Income will be considered to be from sources within the United States for purposes of paragraph (c)(1) of this section if, pursuant to a plan or arrangement—

(i) The income is received in exchange for consideration provided to another person; and

(ii) Such person (or another person) provides the same consideration (or consideration of a like kind) to a third person in exchange for one or more payments constituting income from sources within the United States.

(d) *Income from certain sales of inventory property.* For special rules that apply to determine the source of income from certain sales of inventory property, see § 1.863–3(f).

(e) *Service in the Armed Forces.* In the case of a member of the Armed Forces of the United States, the following rules will apply for determining the source of compensation for services performed in compliance with military orders:

(1) If the individual is a bona fide resident of a possession and such services are performed in the United States or in another possession, the compensation constitutes income from sources within the possession of which the individual is a bona fide resident (and not from sources within the United States or such other possession).

(2) If the individual is not a bona fide resident of a possession and such services are performed in a possession, the compensation constitutes income from sources within the United States (and not from sources within such possession).

(f) *Gains from certain dispositions of property*—(1) *Property of former U.S. residents.* (i) Except to the extent an election is made under paragraph (f)(1)(vi) of this section, income from sources within the relevant possession will not include gains from the disposition of property described in paragraph (f)(1)(ii) of this section by an individual described in paragraph (f)(1)(iii) of this section. See also section 1277(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085) (providing that gains from the disposition of certain property by individuals who acquired residency in certain possessions will be considered to be from sources within the United States).

(ii) Property is described in this paragraph (f)(1)(ii) when the following conditions are satisfied—

(A) The property is of a kind described in section 731(c)(3)(C)(i) or 954(c)(1)(B); and

(B) The property was owned by the individual before such individual became a bona fide resident of the relevant possession.

(iii) An individual is described in this paragraph (f)(1)(iii) when the following conditions are satisfied—

(A) For the taxable year for which the source of the gain must be determined, the individual is a bona fide resident of the relevant possession; and

(B) For any of the 10 years preceding such year, the individual was a citizen or resident of the United States (other than a bona fide resident of the relevant possession).

(iv) If an individual described in paragraph (f)(1)(iii) of this section exchanges property described in paragraph (f)(1)(ii) of this section for other property in a transaction in which gain or loss is not required to be recognized (in whole or in part) under U.S. income tax principles, such other property will also be considered property described in paragraph (f)(1)(ii) of this section.

(v) If an individual described in paragraph (f)(1)(iii) of this section owns, directly or indirectly, at least 10 percent (by value) of any entity to which property described in paragraph (f)(1)(ii) of this section is transferred in a transaction in which gain or loss is not required to be recognized (in whole or in part) under U.S. income tax principles, any gain recognized upon a disposition of the property by such entity will be treated as income from sources outside the relevant possession if any gain recognized upon a direct or indirect disposition of the individual's interest in such entity would have been so treated under paragraph (f)(1)(iv) of this section.

(vi) Notwithstanding the general rule of paragraph (f)(1)(i) of this section and section 1277(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), an individual described in paragraph (f)(1)(iii) of this section may elect to treat as gain from sources within the relevant possession the portion of the gain attributable to the individual's possession holding period. The election under this paragraph (f)(1)(vi) will be considered made if the individual's income tax return for the year of disposition of the property reports the portion of gain attributable to the taxpayer's possession holding period as determined in accordance with paragraph (f)(1)(vi)(A) or paragraph (f)(1)(vi)(B) of this section, as the case may be.

(A) In the case of marketable securities, the portion of gain attributable to the possession holding period will be determined by reference to the fair market value of the marketable security at the close of the market on the first day of the individual's possession holding period. In the event that the individual is a bona fide resident of the relevant possession for more than a single continuous period, the portion of gain described in this paragraph (f)(1)(vi)(A) will be the aggregate of the portions of gain (or offsetting loss) attributable to each possession holding period.

(B) In the case of property other than marketable securities, the portion of gain attributable to the possession holding period in the relevant possession will be determined by multiplying the total gain on disposition of the property by a fraction, the numerator of which is the number of days in the possession holding period and the denominator of which is the total number of days in the individual's holding period for the property. For purposes of the preceding sentence, in the event that the individual is a bona fide resident of the relevant possession for more than a single continuous period, the number of days in the numerator will be the aggregate of the number of days in each possession holding period. For purposes of this paragraph (f)(1)(vi)(B), the denominator will include days that are required to be included in an individual's holding period under section 735(b), section 1223, and any other applicable holding period rule in the Internal Revenue Code.

(vii) For purposes of paragraph (f)(1)(vi) of this section—

(A) The term *marketable securities* means property described in paragraph (f)(1)(ii) of this section that is, throughout the individual's holding period, actively traded within the meaning of § 1.1092(d)–1(a); and

(B) The term *possession holding period* means the part of the individual's holding period for the

property during which the individual is a bona fide resident of the relevant possession. However, for this purpose, the possession holding period will be considered to commence in all cases on the first day during such period that the individual does not have a tax home outside the relevant possession. In the event that the individual is a bona fide resident of the relevant possession for more than a single continuous period, each possession holding period prior to the one ending on the date of sale or other disposition will be considered to end on the first day that the individual has a tax home outside the relevant possession. With respect to the determination of tax home, see § 1.937–1(d).

(2) *Special rules under section 865 for possessions*—(i) Except as provided in paragraph (f)(1) of this section—

(A) Gain that is considered to be derived from sources outside of the United States under section 865(g)(3) will be considered income from sources within Puerto Rico; and

(B) Gain that is considered to be derived from sources outside of the United States under section 865(h)(2)(B) will be considered income from sources within the possession in which the liquidating corporation is created or organized.

(ii) In applying the principles of section 865 and the regulations under that section pursuant to paragraph (b) of this section, the rules of section 865(g) will not apply, but the special rule of section 865(h)(2)(B) will apply with respect to gain recognized upon the liquidation of corporations created or organized in the United States.

(g) *Dividends*—(1) *Dividends from certain possessions corporations*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, with respect to any possessions shareholder, only the possessions source ratio of any dividend paid or accrued by a corporation created or organized in a possession (possessions corporation) will be treated as income from sources within such possession. For purposes of this paragraph (g)—

(A) The *possessions source ratio* will be a fraction, the numerator of which is the gross income of the possessions corporation from sources within the possession in which it is created or organized (applying the rules of this section) for the testing period and the denominator of which is the total gross income of the corporation for the testing period; and

(B) The term *possessions shareholder* means any individual who is a bona fide resident of the possession in which the corporation is created or organized and who owns, directly or indirectly, at least 10 percent of the total voting stock of the corporation.

(ii) *Dividends from corporations engaged in the active conduct of a trade or business in the relevant possession.* The entire amount of any dividend paid or accrued by a possessions corporation will be treated as income from sources within the possession in which it is created or organized when the following conditions are met—

(A) 80 percent or more of the gross income of the corporation for the testing period was derived from sources within such possession (applying the rules of this section) or was effectively connected with the conduct of a trade or business in such possession (applying the rules of § 1.937–3); and

(B) 50 percent or more of the gross income of the corporation for the testing period was derived from the active conduct of a trade or business within such possession.

(iii) *Testing period.* For purposes of this paragraph (g)(1), the term *testing period* means the 3-year period ending with the close of the taxable year of the payment of the dividend (or for such part of such period as the corporation has been in existence).

(iv) *Subsidiary look-through rule.* For purposes of this paragraph (g)(1), if a possessions corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, such possessions corporation will be treated as if it—

(A) Directly received its proportionate share of the income of such other corporation; and

(B) Actively conducted any trade or business actively conducted by such other corporation.

(2) *Dividends from other corporations.* In applying the principles of section 861 and the regulations under that section pursuant to paragraph (b) of this section, the special rules relating to dividends for which deductions are allowable under section 243 or 245 will not apply.

(h) *Income inclusions.* For purposes of determining whether an amount described in section 904(h)(1)(A) constitutes income from sources within the relevant possession—

(1) If the individual owns (directly or indirectly) at least 10 percent of the total voting stock of the corporation from which such amount is derived, the principles of section 904(h)(2) will apply. In the case of an individual who is not a possessions shareholder (as defined in paragraph (g)(1)(i)(B) of this section), the preceding sentence will apply only if the corporation qualifies as a ''United States-owned foreign corporation'' for purposes of section 904(h); and

(2) In all other cases, the amount will be considered income from sources in the jurisdiction in which the corporation is created or organized.

(i) *Interest*—(1) *Interest from certain possessions corporations*—(i) *In general.* Except as provided in paragraph (i)(1)(ii) of this section, with respect to any possessions shareholder (as defined in paragraph (g)(1)(i)(B) of this section), interest paid or accrued by a possessions corporation will be treated as income from sources within the possession in which it is created or organized to the extent that such interest is allocable to assets that generate, have generated, or could reasonably have been expected to generate income from sources within such possession (under the rules of this section) or income effectively connected with the conduct of a trade or business within such possession (under the rules of § 1.937–3). For purposes of the preceding sentence, the principles of §§ 1.861–9 through 1.861–12 will apply.

(ii) *Interest from corporations engaged in the active conduct of a trade or business in the relevant possession.* The entire amount of any interest paid or accrued by a possessions corporation will be treated as income from sources within the possession in which it is created or organized when the conditions of paragraphs (g)(1)(ii)(A) and (B) of this section are met (applying the rules of paragraphs (g)(1)(iii) and (iv) of this section).

(2) *Interest from partnerships.* Interest paid or accrued by a partnership will be treated as income from sources within a possession only to the extent that such interest is allocable to income effectively connected with the conduct of a trade or business in such possession. For purposes of the preceding sentence, the principles of § 1.882–5 will apply (as if the partnership were a foreign corporation and as if the trade or business in the possession were a trade or business in the United States).

(j) *Indirect ownership.* For purposes of this section, the rules of section 318(a)(2) will apply except that the language ''5 percent'' will be used instead of ''50 percent'' in section 318(a)(2)(C).

(k) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (i) X, a U.S. citizen, resides in State N and acquires stock of Corporation C, a domestic corporation, in 2008 for $10x. X moves to the Northern Mariana Islands (NMI) on March 1, 2009 and changes his principal place of business to NMI on that same date.

Assume for purposes of this example that, under § 1.937–1(b) and (f)(1) (year-of-move exception), X is considered a bona fide resident of NMI for 2009 through 2012. On March 1, 2009, the closing value of X's stock in Corporation C, a marketable security (within the meaning of paragraph (f)(1)(vii)(A) of this section), is $20x. On January 3, 2012, X sells all his Corporation C stock for $70x.

(ii) Pursuant to section 1277(e) of the Tax Reform Act of 1986, and absent an election under paragraph (f)(1)(vi) of this section, all of X's gain ($60x) will be treated as income from sources within the United States for all purposes of the Internal Revenue Code (including section 7654, as in effect with respect to the NMI), and (under paragraph (f)(1)(i) of this section) not as income from sources in the NMI. However, pursuant to paragraph (f)(1)(vi) of this section, X may elect on his 2012 income tax return filed with NMI to treat the portion of this gain attributable to X's possession holding period with respect to NMI as gain from sources within NMI. X's possession holding period with respect to NMI begins on March 1, 2009, the date his tax home changes to the NMI. Under paragraph (f)(1)(vi)(A) of this section, the portion of X's gain attributable to this possession holding period is $50x, the excess of the sale price of the stock ($70x) over its closing value ($20x) on the first day of the possession holding period. By reporting $50x of gain on his 2012 NMI return, X will elect under paragraph (f)(1)(vi) of this section to treat that amount as NMI source income.

Example 2. (i) R, a U.S. citizen, resides in State F and acquires a 5 percent interest in Partnership P on January 1, 2009. R moves to Puerto Rico on June 1, 2010 and changes her principal place of business to Puerto Rico on that same date. Assume for purposes of this example that under § 1.937–1(b) and (f)(1) (year-of-move exception), R is considered a bona fide resident of Puerto Rico for 2010 through 2012. On June 1, 2010, R's interest in Partnership P is not a marketable security within the meaning of section 731(c)(2). On December 31, 2012, having owned the interest in Partnership P for a period of 4 years (1461 days), R sells it, recognizing gain of $100x.

(ii) Pursuant to paragraph (f)(1) of this section, and absent an election under paragraph (f)(1)(vi) of this section, the gain will not be treated as income from sources within Puerto Rico for purposes of the Internal Revenue Code (including section 933(1)). However, pursuant to paragraph (f)(1)(vi) of this section, R may elect on her 2012 return filed with the IRS to treat the portion of this gain attributable to R's possession holding period with respect to Puerto Rico as gain from sources within Puerto Rico. R's possession holding period with respect to Puerto Rico is the 945-day period from June 1, 2010, the date her tax home changes to Puerto Rico, through December 31, 2012, the date of sale. Under paragraph (f)(1)(vi)(B) of this section, the portion of R's gain attributable to this possession holding period is $64.68x, computed as follows:

$$\$100 \times \text{gain} \times \frac{\text{945 days in possession holding period}}{\text{1461 days in total holding period}}$$

(iii) By reporting $64.68x of gain on her 2012 Federal return, R will elect under paragraph (f)(1)(vi) of this section to treat that amount as Puerto Rico source income.

Example 3. X, a bona fide resident of Possession S, a section 931 possession (as defined in § 1.931–1(c)(1)), is engaged in a trade or business in the United States through an office in State H. In 2008, this office materially participates in the sale of inventory property in Possession S, such that the income from these inventory sales is considered effectively connected to this trade or business in the United States under section 864(c)(4)(B)(iii). This income will not be treated as income from sources within Possession S for purposes of section 931(a)(1) pursuant to paragraph (c)(1)(ii) of this section, but nonetheless will continue to be treated as income from sources without the United States under section 862 (for example, for purposes of section 904).

Example 4. (i) X, a bona fide resident of Possession I, owns 25 percent of the outstanding shares of A Corp, a corporation organized under the laws of Possession I. In 2010, X receives a dividend of $70x from A Corp. During 2008 through 2010, A Corp has gross income from the following sources:

	Possession I sources	*Sources outside possession I*
2008	$10x	$20x
2009	20x	10x
2010	25x	15x

(ii) A Corp owns 50 percent of the outstanding shares of B Corp, a corporation organized under the laws of Country FC. During 2008 through 2010, B Corp has gross income from the following sources:

	Possession I sources	*Sources outside possession I*
2008	$10x	$6x
2009	14x	8x
2010	10x	4x

(iii) A Corp is treated as having received 50 percent of the gross income of B Corp. Therefore, for 2008 through 2010, the gross income of A Corp is from the following sources:

	Possession I sources	*Sources outside possession I*
2008	$15x	$23x
2009	27x	14x
2010	30x	17x
Totals	$72x	$54x

(iv) Pursuant to paragraph (g) of this section, the portion of the dividend of $70x that X receives from Corp A in 2010 that is treated as income from sources within Possession I is 72/126 of $70x, or $40x.

Example 5. X is a U.S. citizen and a bona fide resident of the Northern Mariana Islands (NMI). In 2008, X receives compensation for services performed as a member of the crew of a fishing boat. Ten percent of the services for which X receives compensation are performed in the NMI, and 90 percent of X's services are performed in international waters. Under the principles of section 861(a)(3) as applied pursuant to paragraph (b) of this section, the compensation that X receives for services performed in the NMI is treated as income from sources within the NMI. Under the principles of section 863(d)(1)(A) as applied pursuant to paragraph (b) of this section, the compensation that X receives for services performed in international waters is treated as income from sources within the NMI for purposes of the Internal Revenue Code (including section 7654, as in effect with respect to the NMI). Thus, all of X's compensation for services during 2008 is treated as income from sources within the NMI.

Example 6. X, a U.S. citizen, resides in State L and receives $2,500 of compensation for services performed in Possession J during 2008 for Y, X's employer. X is temporarily present in Possession J in 2008 for a period (or periods) not exceeding a total of 90 days. Y, a U.S. citizen, is not a bona fide resident of Possession J and is not engaged in a trade or business within Possession J. Under the principles of section 861(a)(3) as applied pursuant to paragraph (b) of this section, the compensation that X receives for services performed in Possession J during 2008 is not treated as income from sources within Possession J.

Example 7. (i) Company Y, a corporation organized in State C, produces, markets, and distributes music products. Y enters into a recording contract with Z, a recording artist who is a bona fide resident of the U.S. Virgin Islands (USVI). Pursuant to the contract between Y and Z, Z agrees to perform services as writer, musician, and vocalist on the recording of a new musical composition and related music video. Under the contract, all songs, recordings and related artwork, packaging copy, and liner notes, together with copyrights and other intellectual property in those works, are the sole property of Y, and Z obtains no proprietary rights in that property. As compensation for Z's services, all of which are performed at a recording studio or other locations in the USVI, Y agrees to pay amounts designated as

the ''writer's share'' to Z based on a percentage of the music products sold. Y also agrees to make an upfront payment to Z as an advance against future portions of Z's writer's share.

(ii) To the extent that Z performs personal services within the USVI, the compensation that Z receives for his services is sourced to the USVI under the principles of section 861(a)(3) and § 1.861–4 as applied pursuant to § 1.937–2(b). If all of Z's services are performed in the USVI, none of the writer's share is derived from sources within the United States under section 861(a)(3) and § 1.861–4, nor is it effectively connected with the conduct of a trade or business in the United States under section 864(c)(3). Accordingly, the U.S. income rule of section 937(b)(2) and paragraph (c)(1) of this section would not operate to prevent Z's services income from being USVI source or USVI effectively connected income within the meaning of section 937(b)(1). If Z also performs services in the United States, however, then the U.S. income rule would apply to the part of Z's compensation that is sourced to the United States under section 861(a)(3) and § 1.861–4. In the event that Y and Z are controlled taxpayers within the meaning of § 1.482–1(i)(5), section 482 and the regulations under that section, including § 1.482–9T(i), would apply to evaluate the arm's length amount charged for Z's controlled services.

(l) *Effective/applicability dates.* Except as otherwise provided in this paragraph (l), this section applies to income earned in taxable years ending after April 9, 2008. Taxpayers may choose to apply paragraph (b) of this section to income earned in open taxable years ending after October 22, 2004. Taxpayers may choose to apply paragraph (f)(1) of this section to dispositions made after April 11, 2005.

§ 1.937–2T [Removed]

■ **Par. 29.** Section 1.937–2T is removed.

■ **Par. 30.** Section 1.937–3 is added to read as follows:

§ 1.937–3 Income effectively connected with the conduct of a trade or business in a possession.

(a) *Scope.* Section 937(b) and this section set forth the rules for determining whether income is effectively connected with the conduct of a trade or business within a particular possession (the relevant possession) for purposes of the Internal Revenue Code, including sections 881(b) and 957(c) and Subpart D, Part III, Subchapter N, Chapter 1 of the Internal Revenue Code. Paragraph (c) of this section does not apply, however, for purposes of section 881(b). In the case of a possession or territory that administers income tax laws that are identical (except for the substitution of the name of the possession or territory for the term ''United States'' where appropriate) to those in force in the United States, these rules do not apply for purposes of the application of such laws.

(b) *In general.* Except as provided in paragraphs (c) and (d) of this section, the principles of section 864(c) and the regulations under that section (relating to the determination of income, gain or loss that is effectively connected with the conduct of a trade or business within the United States) generally will be applied in determining whether income is effectively connected with the conduct of a trade or business within the relevant possession, without regard to whether the taxpayer qualifies as a nonresident alien individual or a foreign corporation with respect to such possession. Subject to the rules of this section, the principles of section 864(c)(4) will apply for purposes of determining whether income from sources without the relevant possession is effectively connected with the conduct of a trade or business in the relevant possession. For purposes of the preceding sentence, all income other than income from sources within the relevant possession (as determined under the rules of § 1.937–2) will be considered income from sources without the relevant possession in the application of the principles of section 864(c) under this paragraph (b), it generally will be sufficient to substitute the name of the relevant possession for the term ''United States'' where appropriate, but additional substitutions may be necessary to accomplish the intent of section 937(b) and this section. In no case, however, will a bona fide resident or other person have, as a result of the application of these principles, more income effectively connected with the conduct of a trade or business in the relevant possession than the amount of U.S. effectively connected income that a similarly situated U.S. person who is not a bona fide resident would have under section 864(c).

(c) *U.S. income*—(1) *In general.* Except as provided in paragraph (d) of this section, income considered to be effectively connected with the conduct of a trade or business within the relevant possession will not include any item of income determined under the rules of sections 861 through 865 and the regulations under those provisions to be—

(i) From sources within the United States; or

(ii) Effectively connected with the conduct of a trade or business within the United States.

(2) *Conduit arrangements.* Income will be considered to be from sources within the United States for purposes of paragraph (c)(1) of this section if, pursuant to a plan or arrangement—

(i) The income is received in exchange for consideration provided to another person; and

(ii) Such person (or another person) provides the same consideration (or consideration of a like kind) to a third person in exchange for one or more payments constituting income from sources within the United States.

(d) *Income from certain sales of inventory property.* Paragraph (c) of this section will not apply to income from sales of inventory property described in § 1.863–3(f).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. X is a bona fide resident of Possession I, a section 931 possession (as defined in § 1.931–1(c)(1)). X has an office in Possession I from which X conducts a business consisting of the development and sale of specialized computer software. A purchaser of software will frequently pay X an additional amount to install the software on the purchaser's operating system and to ensure that the software is functioning properly. X performs the installation services at the purchaser's place of business, which may be in Possession I, in the United States, or in another country. The provision of such services is not de minimis and constitutes a separate transaction under the rules of § 1.861–18. Under the principles of section 864(c)(4) as applied pursuant to paragraph (b) of this section, the compensation that X receives for personal services performed outside of Possession I is not considered to be effectively connected with the conduct of a trade or business in Possession I for purposes of section 931(a)(2).

Example 2. (i) F Bank is organized under the laws of Country FC and operates an active banking business from offices in the U.S. Virgin Islands (USVI). In connection with this banking business, F Bank makes loans to and receives interest payments from borrowers who reside in the USVI, in the United States, and in Country FC.

(ii) Under the principles of section 861(a)(1) as applied pursuant to § 1.937–2(b), interest payments received by F Bank from borrowers who reside in the United States or in Country FC constitute income from sources outside of the USVI. Under the principles of section 864(c)(4) as applied pursuant to paragraph (b) of this section, interest income from sources outside of the USVI generally may constitute income that is effectively connected with the conduct of a trade or business within the USVI for purposes of the Internal Revenue Code. However, interest payments received by F Bank from borrowers who reside in the United States constitute income from sources within the United States under section 861(a)(1). Accordingly, under paragraph (c)(1) of this section, such interest income will not be treated as effectively connected with the conduct of a trade or business in the USVI for purposes of the Internal Revenue Code (for example, for purposes of section

934(b)). Interest payments received by F Bank from borrowers who reside in Country FC, however, may be treated as effectively connected with the conduct of a trade or business in the USVI for purposes of the Internal Revenue Code (including section 934(b)).

(iii) To the extent that, as described in section 934(a), the USVI administers income tax laws that are identical (except for the substitution of the name of the USVI for the term ''United States'' where appropriate) to those in force in the United States, interest payments received by F Bank from borrowers who reside in the United States or in Country FC may be treated as income that is effectively connected with the conduct of a trade or business in the USVI for purposes of F Bank's income tax liability to the USVI under mirrored section 882.

Example 3. (i) G is a partnership that is organized under the laws of, and that operates an active financing business from offices in, Possession I. Interests in G are owned by D, a bona fide resident of Possession I, and N, an alien individual who resides in Country FC. Pursuant to a pre-arrangement, G loans $x to T, a business entity organized under the laws of Country FC, and T in turn loans $y to E, a U.S. resident. In accordance with the arrangement, E pays interest to T, which in turn pays interest to G.

(ii) The arrangement constitutes a conduit arrangement under paragraph (c)(2) of this section, and the interest payments received by G are treated as income from sources within the United States for purposes of paragraph (c)(1) of this section. Accordingly, the interest received by G will not be treated as effectively connected with the conduct of a trade or business in Possession I for purposes of the Internal Revenue Code (including sections 931(a)(2) and 934(b), if applicable with respect to D). Whether such interest constitutes income from sources within the United States for other purposes of the Internal Revenue Code under generally applicable conduit principles will depend on the facts and circumstances. See, for example, *Aiken Indus., Inc.* v. *Commissioner*, 56 T.C. 925 (1971).

(iii) If Possession I administers income tax laws that are identical (except for the substitution of the name of the possession for the term ''United States'' where appropriate) to those in force in the United States, the interest received by G may be treated as income effectively connected with the conduct of a trade or business in Possession I under mirrored section 864(c)(4) for purposes of determining the Possession I territorial income tax liability of N under mirrored section 871.

Example 4. (i) Corporation A, a corporation organized in Possession X, is engaged in a business consisting of the development of computer software and the sale of that software. Corporation A has its sole place of business in Possession X and is not engaged in the conduct of a trade or business in the United States. Corporation A receives orders for its software from customers in the United States and around the world. After orders are accepted, Corporation A's software is either loaded onto compact discs at Corporation A's Possession X facility and shipped via common carrier, or downloaded from Corporation A's server in Possession X. The sales contract provides that the rights, title, and interest in the product will pass from Corporation A to the customer either at Corporation A's place of business in Possession X (if shipped in compact disc form) or at Corporation A's server in Possession X (if electronically downloaded). Assume for purposes of this example that each transaction is classified as a sale of a copyrighted article under § 1.861–18(c)(1)(ii) and (f)(2).

(ii) Under the principles of section 863(a), as applied pursuant to § 1.937–2(b), because Corporation A passes the rights, title, and interest to the copyrighted articles in Possession X, Corporation A's sales income is sourced to Possession X. Corporation A's sales income is also effectively connected with the conduct of a trade or business in Possession X, under the principles of section 864(c)(3) as applied pursuant to § 1.937–3(b). Corporation A's income is not from sources within the United States, nor is it effectively connected with the conduct of a trade or business in the United States. Accordingly, the U.S. income rule of section 937(b)(2), § 1.937–2(c)(1), and paragraph (c)(1) of this section does not operate to prevent Corporation A's sales income from being Possession X source and Possession X effectively connected income under section 937(b)(1).

Example 5. (i) Corporation B, a corporation organized in Possession X, has its sole place of business in Possession X and is not engaged in the conduct of a trade or business in the United States. Corporation B employs a software business model generally referred to as an application service provider. Employees of Corporation B in Possession X develop software and maintain it on Corporation B's server in Possession X. Corporation B's customers in the United States and around the world transmit detailed data about their own customers to Corporation B's server and electronic storage facility in Possession X. The customers pay a monthly fee to Corporation B under a Subscription Agreement, and they can use the software to generate reports analyzing the data at any time but do not receive a copy of the software. Corporation B's software allows its customers to generate the reports from their location and to keep track of their relationships with their own customers. Assume for purposes of this example that Corporation B's income from these transactions is derived from the provision of services.

(ii) Under the principles of section 861(a)(3) and § 1.861–4(a), as applied pursuant to § 1.937–2(b), because Corporation B performs personal services wholly within Possession X, the compensation Corporation B receives for services is sourced to Possession X. Corporation B's services income is also effectively connected with the conduct of a trade or business in Possession X, under the principles of section 864(c)(3) as applied pursuant to § 1.937–3(b). Corporation B's income is not from sources within the United States, nor is it effectively connected with the conduct of a trade or business in the United States. Accordingly, the U.S. income rule of section 937(b)(2), § 1.937–2(c)(1), and paragraph (c)(1) of this section does not operate to prevent Corporation B's services income from being Territory X source or Possession X effectively connected income within the meaning of section 937(b)(1).

(f) *Effective/applicability date.* Except as otherwise provided in this paragraph (f), this section applies to income earned in taxable years ending after April 9, 2008. Taxpayers may choose to apply paragraph (b) of this section to income earned in open taxable years ending after October 22, 2004.

§ 1.937–3T [Removed]

■ **Par. 31.** Section 1.937–3T is removed.

■ **Par. 32.** Section 1.957–3 is revised to read as follows:

§ 1.957–3 United States person defined.

(a) *Basic rule*—(1) *In general.* The term *United States person* has the same meaning for purposes of sections 951 through 965 that it has under section 7701(a)(30) and the regulations under that section, except as provided in paragraphs (b) and (c) of this section, which provide, with respect to corporations organized in possessions of the United States, that certain residents of such possessions are not United States persons. The effect of determining that an individual is not a United States person for such purposes is to exclude such individual in determining whether a foreign corporation created or organized in, or under the laws of, a possession of the United States is a controlled foreign corporation. See § 1.957–1 for the definition of the term ''controlled foreign corporation.''

(2) *Special provisions applicable to possessions of the United States.* For purposes of this section—

(i) The term *possession of the United States* means Puerto Rico or any section 931 possession;

(ii) The term *section 931 possession* has the same meaning that it has under § 1.931–1(c)(1);

(iii) The rules of § 1.937–1 will apply for determining whether an individual is a bona fide resident of a possession of the United States;

(iv) Except as provided in paragraph (b)(2) of this section, the rules of § 1.937–2 will apply for determining whether income is from sources within a possession of the United States; and

(v) The rules of § 1.937–3 will apply for determining whether income is effectively connected with the conduct of a trade or business in a possession of the United States.

(b) *Puerto Rico corporation and resident.* An individual (who, without

regard to this paragraph (b), is a United States person) will not be considered a United States person with respect to a foreign corporation created or organized in, or under the laws of, Puerto Rico for the taxable year of such corporation that ends with or within the taxable year of such individual if—

(1) Such individual is a bona fide resident of Puerto Rico during his entire taxable year in which or with which the taxable year of such foreign corporation ends; and

(2) A dividend received by such individual from such corporation during the taxable year of such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico. For purposes of this paragraph (b)(2), the rules of § 1.937–2(g)(1) will not apply.

(c) *Section 931 possession corporation and resident.* An individual (who, without regard to this paragraph (c), is a United States person) will not be considered a United States person with respect to a foreign corporation created or organized in, or under the laws of, a section 931 possession for the taxable year of such corporation that ends with or within the taxable year of such individual if—

(1) Such individual is a bona fide resident of such section 931 possession during his entire taxable year in which or with which the taxable year of such foreign corporation ends; and

(2) Such corporation satisfies the following conditions—

(i) 80 percent or more of its gross income for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within section 931 possessions or was effectively connected with the conduct of a trade or business in section 931 possessions; and

(ii) 50 percent or more of its gross income for such period (or part) was derived from the active conduct of a trade or business within section 931 possessions.

(d) *Effective/applicability date.* This section applies to taxable years ending after April 9, 2008.

§ 1.957–3T [Removed]

■ **Par. 33.** Section 1.957–3T is removed.

■ **Par. 34.** Section 1.1402(a)–12 is revised to read as follows:

§ 1.1402(a)–12 Continental shelf and certain possessions of the United States.

(a) *Certain possessions.* For purposes of the tax on self-employment income, the exclusion from gross income provided by section 931 (relating to bona fide residents of certain possessions of the United States) will not apply. Net earnings from self-employment are subject to the tax on self-employment income even if such amounts are excluded from gross income under section 931.

(b) *Continental shelf.* For the definition of the term ''United States'' and for other geographical definitions relating to the continental shelf, see section 638 and § 1.638–1.

(c) *Effective/applicability date.* This section applies to taxable years ending after April 9, 2008.

§ 1.1402(a)–12T [Removed]

■ **Par. 35.** Section 1.1402(a)–12T is removed.

■ **Par. 36.** Section 1.6012–1 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 1.6012–1 Individuals required to make returns of information.

(a) * * *

(1) * * *

(iii) An alien bona fide resident of Puerto Rico or any section 931 possession, as defined in § 1.931–1(c)(1), during the entire taxable year.

* * * * *

■ **Par. 37.** Section 1.6038–2 is amended by revising paragraph (d) and adding a new sentence at the end of the paragraph (m) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

* * * * *

(d) *U.S. person*—(1) *In general.* For purposes of section 6038 and this section, the term *United States person* has the meaning assigned to it by section 7701(a)(30), except as provided in paragraphs (d)(2) and (3) of this section.

(2) *Special rule for individuals residing in certain possessions.*—(i) With respect to an individual who is a bona fide resident of Puerto Rico, the term *United States person* has the meaning assigned to it by § 1.957–3 except that the rules of § 1.937–2(g)(1) will apply.

(ii) With respect to an individual who is a bona fide resident of any section 931 possession, as defined in § 1.931–1(c)(1), the term *United States person* has the meaning assigned to it by § 1.957–3.

(3) *Special rule for certain nonresident aliens.* An individual for whom an election under section 6013(g) or (h) is in effect will, subject to the exceptions contained in paragraph (d)(2) of this section, be considered a United States person for purposes of section 6038 and this section.

* * * * *

(m) * * * Paragraph (d) of this section applies to taxable years ending after April 9, 2008.

§ 1.6038–2T [Removed]

■ **Par. 38.** Section 1.6038–2T, is removed.

■ **Par. 39.** Section 1.6046–1 is amended by revising paragraph (f)(3) and adding a new paragraph (l) to read as follows:

§ 1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

* * * * *

(f) * * *

(3) *U.S. person*—(i) *In general.* For purposes of section 6046 and this section, the term *United States person* has the meaning assigned to it by section 7701(a)(30), except as provided in paragraphs (f)(3)(ii) and (iii) of this section.

(ii) *Special rule for individuals residing in certain possessions.*—(A) With respect to an individual who is a bona fide resident of Puerto Rico, the term *United States person* has the meaning assigned to it by § 1.957–3 except that the rules of § 1.937–2(g)(1) will apply.

(B) With respect to individuals who are bona fide residents of any section 931 possession, as defined in § 1.931–1(c)(1), the term *United States person* has the meaning assigned to it by § 1.957–3.

(iii) *Special rule for certain nonresident aliens.* An individual for whom an election under section 6013(g) or (h) is in effect will, subject to the exceptions contained in paragraph (f)(3)(ii) of this section, be considered a United States person for purposes of section 6046 and this section.

* * * * *

(l) *Effective/applicability date.* Paragraph (f)(3) of this section applies to taxable years ending after April 9, 2008.

§ 1.6046–1T [Removed]

■ **Par. 40.** Section 1.6046–1T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 41.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 42.** Section 301.6688–1 is revised to read as follows:

§ 301.6688–1 Assessable penalties with respect to information required to be furnished with respect to possessions.

(a) *In general.* Each individual described in section 7654(a) who is subject to an information reporting requirement promulgated under the authority of section 937(c) or 7654 and who fails to fully satisfy such requirement within the time prescribed for reporting such information must, in addition to any criminal penalty provided by law, pay a penalty of $1000 for each such failure. Information reporting requirements promulgated under the authority of sections 937(c) and 7654(e) include the requirement for an individual to file Form 8898, ''Statement for Individuals who Begin or End Bona Fide Residence in a U.S. Possession,'' under § 1.937–1(h) of this chapter, to report that he or she became or ceased to be a bona fide resident of a possession.

(b) *Manner of payment.* The penalty set forth in paragraph (a) of this section must be paid in the same manner as tax upon the issuance of a notice and demand for the penalty.

(c) *Reasonable cause*—(1) *In general.* The penalty set forth in paragraph (a) of this section will not apply if it is established to the satisfaction of the appropriate tax authority (as defined in paragraph (c)(2) of this section) that the failure to file the information return or furnish the information within the prescribed time was due to reasonable cause and not to willful neglect. An individual who wishes to avoid the penalty must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the information return on time, or furnish the information on time, in the form of a written statement containing a declaration that it is made under penalties of perjury. This statement must be filed with Internal Revenue Service Center where Form 8898 must be filed. In determining whether there was reasonable cause for failure to furnish the required information, account will be taken of the fact that the individual was unable to furnish the required information in spite of the exercise of ordinary business care and prudence in his effort to furnish the information. An individual will be considered to have exercised ordinary business care and prudence in his effort to furnish the required information if he made reasonable efforts to furnish the information but was unable to do so because of a lack of sufficient facts on which to make a proper determination.

(d) *Effective/applicability date.* This section applies to taxable years ending after April 9, 2008.

§ 301.6688–1T [Removed]

■ **Par. 43.** Section 301.6688–1T is removed.

■ **Par. 44.** Section 301.7701(b)–1 is amended by revising paragraph (d) to read as follows:

§ 301.7701(b)–1 Resident alien.

* * * * *

(d) *Application of section 7701(b) to the possessions and territories*—(1) *Application to aliens for purposes of mirror systems.* Section 7701(b) provides the basis for determining whether an alien individual is a resident of a United States possession or territory that administers income tax laws that are identical (except for the substitution of the name of the possession or territory for the term ''United States'' where appropriate) to those in force in the United States, for purposes of applying such laws with respect to income tax liability incurred to such possession or territory.

(2) *Non-application for bona fide resident determination.* Section 7701(b) does not provide the basis for determining whether an individual (including an alien individual) is a bona fide resident of a United States possession or territory for Federal income tax purposes. For the applicable rules for making this determination, see section 937(a) and § 1.937–1 of this chapter.

* * * * *

§ 301.7701(b)–1T [Removed]

■ **Par. 45.** Section 301.7701(b)–1T is removed.

■ **Par. 46.** Section 301.7701(b)–9 is amended by revising the section heading and adding new paragraph (b)(5) to read as follows:

§ 301.7701(b)–9 Effective/applicability dates of §§ 301.7701(b)–1 through 301.7701(b)–7.

* * * * *

(b) * * *

(5) *Possessions and territories.* For purposes of applying section 7701(b) and the regulations under that section, § 301.7701(b)–1(d) applies to taxable years ending after April 9, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: April 1, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 08–1105 Filed 4–4–08; 8:45 am]

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Federal Register

Wednesday,
April 9, 2008

Part V

Department of Housing and Urban Development

Capacity Building for Community Development and Affordable Housing Grants; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5196–N–01]

Capacity Building for Community; Development and Affordable Housing Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development, Office of Community Planning and Development.

B. Funding Opportunity Title: Capacity Building for Community Development and Affordable Housing Grants.

C. Announcement Type: Initial Announcement.

D. Funding Opportunity Number: FR–5196-N–01.

E. Catalog of Federal Domestic Assistance (CFDA) Number: 14.252.

F. Dates: The application deadline date is July 18, 2008.

G. Additional Overview Information: The competition is limited to the first four organizations identified in section 4(a) of the HUD Demonstration Act of 1993. These organizations are: Living Cities/The National Community Development Initiative, Enterprise Community Partners, Inc. (formerly The Enterprise Foundation), Local Initiatives Support Corporation (LISC), and Habitat for Humanity International. Application information is contained in the General Section of HUD's 2008 SuperNOFA (73 FR 14882), published March 19, 2008 and the information listed in this NOFA. The application submission information is contained in this NOFA at Section IV. Approximately $36.95 million is available. A 3:1 match of private resources to federal funds is required, as outlined in section 4(c) of the HUD Demonstration Act of 1993.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description. The purpose of the Section 4 capacity building program is to enhance the capacity and ability of community development corporations (CDCs) and community housing development organizations (CHDOs) to carry out community development and affordable housing activities that benefit low-income families.

B. Authority. The capacity building program is authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148, 42 U.S.C. 9816 note), as amended, and the Consolidated Appropriations Act, 2008 (Pub. L. 110–161).

II. Award Information

A. Available Funds. Approximately $33.5 million in Fiscal Year (FY) 2008 funding is available to carry out the eligible activities related to affordable housing and community development for the Section 4 capacity building program, of which up to $5 million may be made available for rural capacity building activities. In addition $3.45 million in FY2007 assistance is being rolled-over into this competition. As a result, approximately $36.95 million is available in this competition.

B. Performance Period. Awards will be for a period of 48 months.

C. Terms of Award. HUD will enter into a grant agreement with selected applicants for the performance period.

III. Eligibility Information

A. Eligible Applicants

1. The competition is limited to the first four organizations identified in section 4(a) of the HUD Demonstration Act of 1993. These organizations are: Living Cities/The National Community Development Initiative, Enterprise Community Partners, Inc. (formerly The Enterprise Foundation), the Local Initiatives Support Corporation (LISC), and Habitat for Humanity International. Specifically, the only applicants eligible for this competition are the four organizations located at the following addresses:

—Living Cities/The National Community Development Initiative, 55 West 125th Street, 11th Floor, New York, NY 10027.

—Enterprise Community Partners, Inc., 10227 Wincopin Circle, Suite 500, Columbia, MD 21044.

—Local Initiatives Support Corporation, 501 Seventh Avenue, 7th Floor, New York, NY 10018.

—Habitat for Humanity International, 121 Habitat Street, Americus, GA 31709.

Affiliates and local offices of these organizations and their community partners are not eligible to compete either directly or independently for capacity building grants under this notice, but rather may seek funding from the above organizations.

2. To be eligible for funding under this NOFA, all applicants must also meet the threshold requirements of the General Section, including the Civil Rights threshold in section III.C.

3. The four eligible applicants may propose assistance using in-house staff, subcontractors, subrecipients, and local organizations that have the requisite experience and capabilities.

B. Match Requirement. Section 4(c) of the HUD Demonstration Act of 1993 requires that each dollar awarded must be matched by three-dollars in cash or in-kind contribution obtained from private sources. This is a threshold requirement. To receive funding under this NOFA, each of the eligible organizations must document their share of matching resources. Eligible organizations must submit a firm letter of commitment for the match from each organization providing the match. HUD will accept documentation from the applicant that provides a firm commitment of resources provided by a third party to a grantee or subgrantee to conduct activities under this award. The source and amount of the match must be specifically provided and explicitly dedicated to the FY2008 Section 4 competitive grant. All match, including in-kind contributions, shall conform to the requirements of 24 CFR 84.23. Applications that do not have letters of commitment that demonstrate they have met the three-to-one match will fail the threshold requirement and will not receive further consideration for funding. Evidence of commitment for the three-to-one match, such as signed letters from private funding sources, shall be scanned and attached to the electronic application or submitted via fax (using form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov) as part of the application.

C. Other

1. Eligible Activities and Priorities. Funds may be used to provide the following services:

a. Training, education, support, and advice to enhance the technical and administrative capabilities of CDCs and CHDOs, including the capacity to participate in consolidated planning, as well as in fair housing planning and continuum-of-care homeless assistance efforts that help ensure community-wide participation in assessing area needs; consulting broadly within the community; cooperatively planning for the use of available resources in a comprehensive and holistic manner; and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

b. Loans, grants, development assistance, predevelopment assistance,

or other financial assistance to CDCs and CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities that create jobs for low-income persons; and

c. Such other activities as may be determined by the grantees in consultation with the Secretary or his or her designee. Activities undertaken as part of, or as a result of, capacity building efforts described in this section shall support the implementation of other HUD programs, especially the Community Development Block Grant (CDBG) programs, HOME Investment Partnerships, homeless programs, and Housing Opportunities for Persons with AIDS (HOPWA). Further, such activities shall support HUD's Strategic Plan and priorities as described in the section V.B.1 and V.B.2 of the General Section.

d. Up to $5 million may be available for rural capacity building activities. Applicants who intend to spend capacity building funds on rural activities should identify those amounts in the application.

2. DUNS Requirement. Refer to the General Section for information regarding the Data Universal Numbering System (DUNS) requirement. Applicants must obtain a DUNS number to receive an award from HUD.

3. Other Eligibility Requirements. All applicants requesting funding under this NOFA must be in compliance with the applicable threshold requirements found in the General Section. Applicants that do not meet these requirements will be ineligible for funding.

4. False Statements. An applicant's false statement in an application is grounds for denial or termination of an award and grounds for possible punishment, as provided in 18 U.S.C. 1001.

5. Environmental Review. Individual project sites to be funded by awards under this NOFA may not be known at the time the individual grant agreements are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or private match funds to a HUD-assisted project may be made until HUD has: (1) completed an environmental review to the extent required under applicable regulations and (2) given notification of its approval, in accordance with 24 CFR 50.3(h).

IV. Application and Submission Information

A. Addresses To Request Application Package. Applications from the four eligible applicants must be received and validated by *Grants.gov* no later than 11:59:59 p.m. eastern time on the application deadline date. HUD must receive paper copy applications from applicants that received a waiver no later than 11:59:59 p.m. on the application deadline date. See the General Section for application submission and timely receipt procedures and for instructions on how to request a waiver. Paper applications will not be accepted, unless the applicant has received a waiver of the electronic submission requirement.

B. Content and Form of Application Submission. A completed application consists of an application submitted by an authorized official of the organization and containing all relevant sections of the application, as shown in the checklist below in Section IV.B.4.

1. Rural Activities. Those applying for funds to be used for rural capacity building activities must submit specific budget information on those rural activities.

2. Page Limitation. Narratives addressing Factors 1 through 5 are limited to no more than 30 typed pages. That is, reviewers will not review more than 30 pages for all five factors combined, except that the page limit does not include the form HUD–96010, Program Logic Model.

3. Prohibition on Materials Not Required. Materials other than what is requested in this NOFA are prohibited. Reviewers will not consider resumes, charts, letters, or any other documents attached to the application that are not specified in this NOFA.

4. Checklist for Application Submission. Procedures for submitting electronic copies are outlined in Sections IV.B. and F. of the General Section. The following checklist is provided as a guide to help ensure that applicants submit all the required elements. For applicants receiving a waiver of the electronic submission requirement, the paper submission must be in the order provided below. All applicants should enter the applicant name, DUNS number, and page numbers on the narrative pages of the application.

__SF–424, Application for Federal Assistance (*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) (SF–424, Version 02, is available from Grants.gov);

__SF–424 Supplement, Survey for Ensuring Equal Opportunity for Applicants (''Faith Based EEO Survey (SF–424 SUPP)'' on Grants.gov);

__Narrative addressing Factors 1 through 5;

__HUD–96010, Program Outcome Logic Model;

__HUD–424–CB, Grant Application Detailed Budget (''HUD Detailed Budget Form'' on Grants.gov);

__HUD–424–CBW, Detailed Budget Worksheet for Non-Construction Projects;

__SF–LLL, Disclosure of Lobbying Activities (if applicable);

__HUD–2880, Applicant/Recipient Disclosure/Update Report (''HUD Applicant Recipient Disclosure Report'' on Grants.gov);

__HUD–2993, Acknowledgment of Application Receipt (applicable to paper applications only);

__HUD–2994–A, You Are Our Client! Grant Applicant Survey (Optional); and

__HUD–96011, Third Party Documentation Facsimile Transmittal (''Facsimile Transmittal Form'' on Grants.gov).

C. Submission Dates and Times. The application deadline date is July 18, 2008. Unless you received a waiver to the electronic application submission requirement, your completed application must be submitted through *http://www.grants.gov/applicants/apply_for_grants.jsp* and must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. (Refer to Section IV of the General Section for further information on the delivery and receipt of applications.)

D. Intergovernmental Review. Intergovernmental review is not applicable to capacity building applications.

E. Funding Restrictions. No fee or profit may be paid to any recipient or subrecipient of an award under this capacity building NOFA.

F. Other Submission Requirements

1. Electronic Delivery

a. The Grants.gov Web site offers a simple, unified application process. There are several registration steps applicants need to complete. Further information is contained in the General Section published on March 19, 2008 (73 FR 14883). Section 4 applicants should also read HUD's **Federal Register** Notice on Early Registration published on March 10, 2008 (73 FR 12751).

b. Electronic signature. Applications submitted through Grants.gov constitute submission as an electronically signed application.

2. Instructions on how to submit electronically are outlined in HUD's ''Desktop User's Guide'' located on HUD's Grants Web site at *http://www.hud.gov/grants/index.cfm*.

3. Waiver of Electronic Submission Requirement. Applicants interested in applying for funding under this NOFA must submit their applications electronically or request a waiver from the electronic submission process. Waiver requests must be submitted in writing by e-mail. Waiver requests must be submitted no later than 15 days prior to the application deadline date and should be e-mailed to Karen E. Daly at *Karen.E.Daly@hud.gov*. If you are granted a waiver from the electronic submission process, your application must be received by HUD no later than 11:59:59 p.m. eastern time on the application deadline date. See the General Section for additional information.

4. Proof of Timely Submission. Applicants must submit their applications via Grants.gov. *http://www.grants.gov/applicants/apply_for_grants.jsp* in time for receipt and validation by 11:59:59 p.m. eastern time on the application deadline date of July 18, 2008. Validation can take up to 72 hours, so applicants should submit with ample time for the process to be completed. Applicants are also advised to submit with sufficient time to correct any deficiencies that would prevent the acceptance of their application by Grants.gov. (Refer to the General Section for specific procedures regarding proof of timely submission of applications.)

V. Application Review Information

A. Criteria. The maximum number of points to be awarded for a capacity building application is 100. The minimum score for an application to be considered for funding is 75. The Section 4 capacity building program is not subject to bonus points, as described in the General Section.

Points are assigned on five factors. When addressing Factors 2 through 5, applicants should discuss the activities that will be carried out during the term of the grant agreement. Submissions should provide relevant examples to support the proposal, where appropriate. Submissions should also be specific when describing the communities, populations, and organizations that they propose to serve and the specific outcomes expected as a result of the activities. Submissions should also be specific about the relationship of their plan to the goals and objectives in the HUD Strategic Plan. The plan can be viewed on the HUD Web site at *http://www.hud.gov/utilities/intercept.cfm?/offices/cfo/reports/hud_strat_plan_2006–2011.pdf*.

1. Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 points)

Factor 1 relates to the capacity of the applicant and its relevant organizational experience. Rating of the ''applicant'' or the ''applicant's organization and staff'' includes in-house staff and any subcontractors and subrecipients who are firmly committed to the project. In responding to Factor 1, applicants should specify the experience, knowledge, skills, and abilities of the applicant's organization and staff, and of any persons and organizations firmly committed to the project. Please do not include the Social Security Numbers of any staff.

a. (5 points) Recent and successful experience of the applicant's organization in building the capacity and ability of CDCs and CHDOs to develop affordable housing and community development activities.

In rating this factor, HUD will consider the extent to which the application demonstrates successful experience, within the last 4 years, in providing technical and administrative expertise to build the capacity of CDCs and CHDOs.

b. (5 points) Depth of experience in managing multiple capacity building tasks, to multiple entities, and in more than one geographic area.

In rating this factor, HUD will consider the extent to which the application demonstrates ability to manage capacity building assignments effectively.

c. (5 points) Knowledgeable key personnel skilled in providing one or more of the eligible activities for the Section 4 program; a sufficient number of staff, or ability to procure qualified experts or professionals, with the knowledge, skills, and abilities to deliver the proposed level of services in the proposed service area in a timely and effective fashion; and an ability to provide capacity building in urban and rural settings.

In rating this factor, HUD will consider the extent to which the application demonstrates that the organization has an adequate number of key staff or the ability to procure individuals with the knowledge of effective capacity building approaches and knowledge of developing affordable housing and community development activities. If applying for funds to be used for rural capacity building activities, clearly identify the need for funds in those rural areas.

2. Rating Factor 2: Need/Extent of the Problem (20 points)

Sound and extensive understanding of need for capacity building in relation to the eligible activities and priorities listed in Section III.C. of this NOFA, as demonstrated by objective information and/or data, such as information from current census data, the American Housing Survey, or other relevant data sources. Sound and extensive understanding of high-priority needs in urban and rural settings for CHDOs and CDCs, as demonstrated by objective information and/or data. If applying for funds to be used for rural capacity building activities, clearly identify the need for funds in those rural areas.

In rating this factor, HUD will evaluate the extent to which the application demonstrates an understanding of the specific needs for capacity building and supports the description of need with reliable, program-specific, quantitative information.

3. Rating Factor 3: Soundness of Approach (40 points)

a. (20 points) A sound approach for addressing the need for eligible capacity building activities in relation to the priorities listed in Section III.C. of this NOFA that will result in positive outcomes.

In rating this factor, HUD will evaluate the extent to which the application presents and supports a detailed, feasible, and practical approach for addressing capacity building needs; including techniques, time frames, goals, and intended beneficiaries, and the likelihood that these activities will be cost-effective and will result in the ability of the organization receiving technical assistance to commence work on specific housing and community development activities by the end of the performance period.

b. (10 points) A feasible work plan for designing, organizing, managing, and carrying out the proposed capacity building activities.

In rating this factor, HUD will evaluate the extent to which the application demonstrates the efficiency of the design, organization, and management of the proposed activities.

c. (10 points) An effective assistance program to specific disadvantaged communities, populations, and/or organizations that previously have been underserved and have the potential to participate in the Section 4 program

(such as the Neighborhood Revitalization Strategy Areas designated by HUD, Colonias, Appalachia's distressed counties, the lower Mississippi Delta region, or locally designated community development target areas). If applying for funds to be used for rural capacity building activities, clearly identify the need for funds in those rural areas.

In rating this factor, HUD will evaluate the extent to which the applicant: (1) has identified and has documented, using reliable data, specific communities, populations, or organizations that have been disadvantaged or previously underserved communities, populations, or organizations and (2) has developed an effective strategy for engaging the participation of those communities, populations, or organizations in the capacity building program.

4. Rating Factor 4: Leveraging Resources (15 points)

This factor evaluates the applicant's ability to leverage (secure) public and/or private sector resources (such as financing, supplies, or services) from sources other than Section 4 that can be added to Section 4 funds to perform eligible activities and sustain the applicant's proposed project. Higher points will be awarded for higher percentages of leveraged resources, compared to the amount of Section 4 funds requested. No leveraging points will be awarded if the minimum match is not exceeded. For leveraging, HUD's Management Plan has a performance goal of ten investment dollars from outside sources in total project development costs for each Section 4 grant awarded. To document leveraging for the FY2008 NOFA, applicants should report their actual results in leveraging Section 4—assisted projects in Federal Fiscal Year 2007 (October 1, 2006–September 30, 2007). All leveraging commitments shall be scanned and attached to the electronic application or submitted via fax using form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov) as part of the application.

Applicants must note that leveraging resources are considered additional resources beyond and above the statutorily required 3:1 matching resource requirement and cannot be counted towards the statutory match requirement.

5. Rating Factor 5: Achieving Results and Program Evaluation (10 points)

a. (5 points) An effective, quantifiable evaluation plan for measuring performance using the Logic Model (form HUD–96010, ''Program Outcome Logic Model'') with specific outcome measures and benchmarks, and performance improvements.

In rating this factor, HUD will evaluate the extent to which the application has an evaluation plan that includes outcomes and is specific, measurable, and appropriate in relation to the activities proposed. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, as well as the quality of the applicant's proposed evaluation and monitoring plans. HUD's strategic framework establishes the goals and objectives for the Department. Please refer to the General Section.

The Logic Model should, at a minimum, discuss those performance indicators that have been developed for use by HUD and the Office of Management and Budget (OMB) in evaluating the Section 4 program, using OMB's Program Assessment Rating Tool (PART). These measures include: (1) The annual number of homes renovated, preserved, or newly constructed; (2) the annual number of trainings created and provided to CDCs; (3) the long-term total development cost estimate of community development projects funded by CDCs; and (4) the efficiency measure of per-unit cost of capacity building for housing units developed or renovated.

Applicants should also outline any other short- or long-term outcomes that are indicators of their program's performance.

b. (5 points) Successful past performance in administering HUD's Section 4 capacity building program. This rating factor reflects HUD's goal to embrace high standards of ethics, management, and accountability. Applicants should include, as applicable, increases in Community Planning and Development (CPD) or affordable housing and community development program accomplishments as a result of capacity building (e.g., number of affordable housing units developed, number of trainings delivered to CDCs and CHDOs, growth of CDC and CHDO capacity over time, efficiency or effectiveness of administration of CPD or community development programs, timeliness of use of CPD or community development program funds, and project development investment and leveraging efficiencies).

In rating this factor, HUD will evaluate the extent to which the application demonstrates successful past performance that was timely and resulted in positive outcomes in the delivery of capacity building for affordable housing and community development. HUD will also consider past performance of current Section 4 grantees, including financial and other information in HUD's files.

B. Review and Selection Process

1. Review Types. Two types of reviews will be conducted. First, HUD will review each application to determine whether it meets threshold eligibility requirements. Second, HUD will review and assign scores to applications using the Factors for Award noted under Criteria, Section V.A.

2. Ranked Order. Once rating scores are assigned, rated applications will be listed in ranked order. Applications within the fundable range (score of 75+ points) may then be funded in ranked order.

3. Threshold Eligibility Requirements. All applicants must be in compliance with the applicable threshold requirements found in the General Section and the eligibility requirements listed in Section III of this NOFA in order to be reviewed, scored, and ranked. Applications that do not meet these requirements and applications that were received after the deadline (see Section IV.C. of the General Section) will be considered ineligible for funding.

VI. Award Administration Information

A. Award Notices. HUD will send written notifications to both successful and unsuccessful applicants. A notification sent to a successful applicant is not an authorization to begin performance or to incur costs.

After selection for funding, each grantee will submit to HUD a specific work and funding plan for each community it proposes to serve, showing when and how the federal funds and matching funds will be used. Applicants will be given the opportunity to amend their logic models according to the grant award, prior to entering into the grant agreement. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 45 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters that need to be addressed prior to approval. Work plans may be developed for less than the full dollar amount and term of the

award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities are also subject to the environmental requirements in section III.C.5. of this notice.

After selection, but prior to award, applicants selected for funding will be required to provide HUD with their written Code of Conduct, if they have not previously done so and it is recorded on the HUD Web site at *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm*.

B. Administrative and National Policy Requirements

1. OMB Circulars and Governmentwide Regulations Applicable to Financial Assistance Programs

Awards under this NOFA will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A–122 (Cost Principles for Nonprofit Organizations), and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations). Copies of the OMB Circulars may be obtained from Executive Office of the President's (EOP) Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, telephone number (202) 395–3080 (this is not a toll-free number) or (800) 877–8339 (a toll-free number for the TTY Federal Information Relay Service, for hearing- or speech impaired persons). Information also may be obtained from the OMB Web site at *http://www.whitehouse.gov/omb/circulars/index.html*.

2. General. See section III.C. of the General Section regarding additional applicable requirements. Please note, for example, when the activities carried out with HUD funds include construction, the grantee must comply with Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.''

C. Reporting

1. Grantees will be required to report to HUD, as specified in the grant agreement. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. As part of the required performance report to HUD, grant recipients must include a completed Program Outcome Logic Model (form HUD–96010), which identifies output and outcome achievements.

2. Additional information or increased frequency of reporting may be required by HUD any time during the grant agreement, if HUD finds such reporting to be necessary for monitoring purposes.

3. To further the consultation process and share the results of progress to date, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC, during the life of the award.

4. The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans, each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan, such as the number of housing units and facilities each CDC or CHDO produces annually during the grant period and the average cost of such units. The performance reports will also include a discussion of the reasonableness of the unit costs, the reasons for slippage if established objectives and goals are not met, and additional pertinent information.

5. A final performance report, in the form described in paragraph (d) immediately above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

6. Financial status reports (SF–269A) shall be submitted quarterly.

VII. Agency Contacts

For Assistance. Applicants may contact Karen E. Daly at (202) 708–1817 (this is not a toll-free number). Persons with hearing and speech impairments may access the above numbers via TTY (text telephone) by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number). Information may also be obtained through the HUD Web site at *www.hud.gov.*

VIII. Other Information

A. Paperwork Reduction Act. The provisions of the Paperwork Reduction Act do not apply because there are fewer than 10 respondents; only four applicants are eligible for this program.

B. Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made, in accordance with the Department's regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

C. Fair Housing and Equal Opportunity. Applications must contain a certification that the applicant and all subgrantees shall comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Americans with Disabilities Act, and will affirmatively further fair housing.

D. Section 3 of the Housing and Urban Development Act of 1968. Applications must contain a certification that the applicant and all subgrantees will comply with section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and HUD's implementing regulations at 24 CFR part 135, which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for the metropolitan area (or nonmetropolitan county) in which the project is located.

Dated: April 2, 2008.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–7400 Filed 4–8–08; 8:45 am]

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Federal Register

Wednesday,
April 9, 2008

Part VI

The President

Proclamation 8233—National Tartan Day, 2008

Federal Register
Vol. 73, No. 69
Wednesday, April 9, 2008

Presidential Documents

Title 3—

The President

Proclamation 8233 of April 4, 2008

National Tartan Day, 2008

By the President of the United States of America

A Proclamation

Americans of Scottish descent have made enduring contributions to our Nation with their hard work, faith, and values. On National Tartan Day, we celebrate the spirit and character of Scottish Americans and recognize their many contributions to our culture and our way of life.

Scotland and the United States have long shared ties of family and friendship, and many of our country's most cherished customs and ideals first grew to maturity on Scotland's soil. The Declaration of Arbroath, the Scottish Declaration of Independence signed in 1320, embodied the Scots' strong dedication to liberty, and the Scots brought that tradition of freedom with them to the New World. Sons and daughters of many Scottish clans were among the first immigrants to settle in America, and their determination and optimism helped build our Nation's character. Several of our Founding Fathers were of Scottish descent, as have been many Presidents and Justices of the United States Supreme Court. Many Scottish Americans, such as Andrew Carnegie, were great philanthropists, founding and supporting numerous scientific, educational, and civic institutions. From the evocative sounds of the bagpipes to the great sport of golf, the Scots have also left an indelible mark on American culture.

National Tartan Day is an opportunity to celebrate all Americans who claim Scottish ancestry, and we are especially grateful for the service in our Armed Forces of Scottish Americans who have answered the call to protect our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 6, 2008, as National Tartan Day. I call upon all Americans to observe this day by celebrating the continued friendship between the people of Scotland and the United States and by recognizing the contributions of Scottish Americans to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 08–1119
Filed 4–8–08; 8:34 am]
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