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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 12, 2008
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

2 CFR Part 3185

45 CFR Part 1185

RIN 3137–AA18

Institute of Museum and Library Services Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: National Foundation for the Arts and Humanities; Institute of Museum and Library Services.

ACTION: Direct final rule.

SUMMARY: The Institute of Museum and Library Services (IMLS) implements Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment, issued on August 31, 2005 [70 FR 51863], by adopting the guidelines in a new part in title 2 of the CFR, the Government-wide title recently established for OMB guidance on grants and agreements, and removing 45 CFR part 1185, the part containing the IMLS implementation of the government-wide common rule on nonprocurement debarment and suspension. This regulatory action would make no substantive change in IMLS policy or procedures for nonprocurement debarment and suspension.

DATES: The effective date for this final rule is September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Institute of Museum and Library Services, ATTN: Office of the General Counsel, 1800 M Street, NW., 9th Floor, Washington, DC 20036; or Calvin D. Trowbridge III, (202) 653–4675. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the IMLS TTY Phone on (202) 653–4614.

SUPPLEMENTARY INFORMATION: This final rule implements the OMB guidance and does not make any changes in current policies and procedures. IMLS is not soliciting public comment on this rule and is instead issuing this rule as a direct final rule. Under 5 U.S.C. 553(b)(3)(A) agencies are not required to undergo notice and comment procedure for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' Because this rule adopts OMB's published guidelines, which followed notice and comment procedures, and collocates IMLS' specific nonprocurement suspension and debarment rules to title 2 of the CFR, we believe that it falls under the exception cited above.

Executive Order 12866

This rule is not significant because the replacement of the common rule with OMB guidance and a brief IMLS adopting regulation does not make any changes in current policies and procedures.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

2 CFR Part 3185

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 1185

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 20 U.S.C. 9103(f), IMLS amends Title 2, Subtitle B, and Title 45, Chapter 1185, of the Code of Federal Regulations as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter XXXI to Subtitle B to read as follows:

Chapter XXXI—Institute of Museum and Library Services

PART 3185—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3185.10 What does this part do?
3185.20 Does this part apply to me?
3185.30 What policies and procedures must I follow?

Subpart A—General

3185.137 Who in IMLS may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E–I—[Reserved]

Authority: 20 U.S.C. 9103(f); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 3185.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Institute of Museum and Library Services (IMLS) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for IMLS to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 3185.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970.

(b) Respondent in an IMLS suspension or debarment action.

(c) IMLS debarment or suspension official;

(d) IMLS grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 3185.30 What policies and procedures must I follow?

The IMLS policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3185.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, IMLS policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3185.137 Who in the IMLS may grant an exception to let an excluded person participate in a covered transaction?

The IMLS Director has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower-tier coverage in the figure in the Appendix to 2 CFR part 180), IMLS does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subpart E–I—[Reserved]

Title 45 Public Welfare

Chapter XI—National Foundation for the Arts and the Humanities

PART 1185—[REMOVED]

■ 2. Under authority Sec. 2455, Public Law 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235) part 1185 is removed.

Calvin D. Trowbridge III,

Deputy General Counsel, Institute of Museum and Library Services.

[FR Doc. E8–18207 Filed 8–8–08; 8:45 am]

BILLING CODE 7036–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AL64

Competitive Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations that provide agencies with the option of establishing a reduction in force (RIF) competitive area that only includes pay band positions. An agency has this option when a RIF competitive area otherwise includes pay band positions and other positions that are not covered by one or more pay bands.

DATES: *Effective Date:* These regulations are effective August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon by telephone on 202–606–0960, by Fax on 202–606–2329, by TDD on 202–418–3134, or by e-mail at *employ@opm.gov*.

SUPPLEMENTARY INFORMATION: On April 15, 2008, OPM published proposed reduction in force (RIF) regulations in the **Federal Register** at 73 FR 20180. Interested parties could submit comments to OPM on the regulations through May 15, 2008. OPM received timely comments from three agencies, two unions, and two individuals on these proposed regulations. We considered all of the timely comments in publishing this final regulation. Below is a discussion of the specific comments.

Discussion of Comments

All three agencies concurred with the option of establishing a separate competitive area for pay band positions. One agency supported our proposed regulation without any additional comments or suggestions.

Two agencies concurred, but had additional comments. One agency suggested that OPM further revise the RIF regulations to allow agencies the additional option of establishing separate competitive areas for individual pay band systems when a competitive area includes more than one pay band system. OPM did not adopt this suggestion. Because all pay band systems have common characteristics flowing from the consolidation of former graded positions into broad pay bands, we see no need to further allow agencies the additional option of establishing separate competitive areas for individual pay

bands when these individual pay bands would otherwise be included in the same competitive area.

The other agency suggested that OPM include criteria for the agency to consider when deciding whether to define separate competitive areas under § 351.402(e) for pay band and for non-pay band positions. The agency also suggested that OPM provide criteria on what types of documentation are appropriate under § 351.403(a)(2)(ii) to supplement an employee's official position description for purposes of establishing one or more pay band competitive levels. OPM did not adopt either suggestion. Because each agency-specific RIF situation is unique, OPM believes that the agency conducting the RIF has the best information to make RIF-related decisions, including the definition of what is an appropriate competitive area or competitive areas for its competing employees, and what documentation is appropriate to supplement the position descriptions of employees in pay band positions. Section 351.204 provides that each agency covered by 5 CFR part 351 is responsible for all decisions when following and applying the RIF regulations if the agency determines that a RIF is necessary.

This agency also suggested that OPM revise the retention regulations to state that an agency retains the right to potentially redefine one or more competitive areas if the agency finds it necessary to conduct a subsequent RIF. OPM did not adopt this suggestion. Present § 351.201(c) provides that the agency's RIF decisions must be uniform and consistent with 5 CFR part 351 in any one RIF (i.e., the agency may potentially make different decisions applying the 5 CFR part 351 regulations to a subsequent RIF).

Finally, this agency suggested that OPM include definitions of ''competitive area'' and ''competitive level'' in section 351.203 (''Definitions''). OPM did not adopt this suggestion. Section 351.402 specifically covers RIF competitive areas while section 351.403 specifically covers RIF competitive levels.

Regarding the two union comments, both unions commented that the proposed regulations would allow agencies to improperly target certain employees for RIF, while unfairly restricting the placement opportunities of these employees. OPM does not agree with this assertion. Agencies must apply the same level of objectivity and administrative probity in using these provisions as they do in making any personnel-related decision. An employee who believes that a competitive area is unlawfully constituted may, as applicable, contest the agency's action. Further, the RIF competitive area is only one of many factors that impact an employee's placement opportunities. Factors such as an individual's veterans' preference status, tenure (e.g., permanent v. temporary), performance appraisal (e.g., Exceptional v. Fully Successful), and years of service all play a part in an employee's final outcome in a RIF scenario.

One union, in objecting to the proposed regulation, commented that potential separate competitive areas in a pay band environment reduces the relative weight of seniority in RIF competition, which the union suggests is a hallmark of the RIF system. OPM disagrees. The proposed RIF regulation continues to assign the same relative weight to each of the four retention factors mandated in 5 U.S.C. 3502(a)(1)–(4): (1) Tenure (i.e., type of appointment), (2) veterans' preference, (3) total creditable civilian and uniformed service, and (4) additional retention service credit for performance. We note that although the RIF regulation, and the determining factors, have been modified through the years, the one true constant of the RIF system since 1876 has been protection based on an individual's veterans' preference status, not necessarily the retention of senior employees.

This union also commented that our proposal to allow separate RIF competitive areas for pay band environments was based on an assumption that a unified competitive area might create difficulty for the agency facing a RIF. The union suggested that changes to governmentwide rules should be based on facts, not guesses. To clarify, from our review of demonstration projects we know that certain inconsistencies exist between pay band positions and positions covered by the General Schedule (GS) or Federal Wage System (FWS). For example, pay band positions are subject to different rules than other positions covered by traditional pay systems (i.e., GS and FWS positions): (1) Each pay band covers a wide salary range that encompass multiple GS or FWS grades, (2) pay band positions are generally covered by generic position descriptions while GS and FWS positions have specific position descriptions keyed in part to the classification of each position, and (3) pay band positions are generally more closely linked to performance incentives than GS and FWS positions. What we do not know is the size or scope of any one RIF an agency may be facing. RIFs involving large numbers of pay band and non-pay band positions will be more disruptive than those with few mixed-positions. This is why we stated in the supplementary information of the proposed regulation published on April 15, 2008, at page 73 FR 20180, that significant inconsistencies ''may'' result when a RIF competitive area includes pay band positions and positions covered by the General Schedule (GS) or Federal Wage System (FWS). The new § 351.402(e) is an agency option, not a requirement, to permit agencies to assess their situation and determine how best to apply the RIF regulations to suit their needs. On May 21, 2008, at 73 FR 29387, OPM published a final regulation covering how an agency may conduct a RIF in a competitive area that includes pay band and other positions not covered by a pay band system if the agency chooses that option.

Of the two individuals who commented, one individual suggested that OPM include a definition of ''pay band'' for purposes of the 5 CFR part 351 regulations. OPM did not adopt this suggestion. Each pay band system includes a specific definition of pay band applicable to that pay band system.

This individual also suggested that OPM provide criteria on what types of records may be considered under § 351.403(a)(2)(ii) to supplement an employee's official position description when establishing pay band competitive levels. OPM did not adopt this suggestion. As noted above in response to an agency's similar suggestion, OPM believes that the agency conducting the RIF has the best information to make RIF-related decisions, including what records are appropriate to supplement the position descriptions of employees in pay band positions.

The other individual is concerned about how a separate competitive area could restrict the potential retention rights of employees who are not covered by a pay band system. As noted above, OPM covered its rationale and justification for this option in the ''Explanation'' material for the proposed regulations published on April 15, 2008, at page 73 FR 20180. One competitive area definition does not necessarily make an individual employee more or less subject to release by RIF than if the agency had retained or implemented a different competitive area definition.

Revisions Made by Final Regulations

OPM is adopting the proposed regulations without change. The final regulation makes the following changes to competitive area and competitive level that are summarized below.

Revisions to Competitive Area

New § 351.402(e) provides that when an agency finds that a competitive area defined under § 351.402(b) includes pay band positions and positions not covered by a pay band, at its discretion the agency may define a competitive area otherwise consistent with § 351.402 to include only pay band positions.

Section 351.402(b) is also revised to include a reference to new § 351.402(e).

Revisions to Competitive Level

Section 351.403(a)(2) is renumbered as § 351.403(a)(2)(i) and revised to clarify that, except as provided in new § 351.403(a)(2)(ii) for pay band positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

New § 351.403(a)(2)(ii) provides that, to establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position with other applicable records that document the employee's actual duties and responsibilities. Note that § 351.403(a)(2)(ii) also applies to RIF competition in a competitive area that includes pay band and other positions.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

■ 1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

■ 2. In § 351.402, paragraph (b) is revised, and paragraph (e) is added, to read as follows:

§ 351.402 Competitive area.

* * * * *

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location and, except as provided in paragraph (e) of this section, it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

* * * * *

(e) When an agency finds that a competitive area defined under paragraph (b) of this section includes pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a separate (and additional) competitive area, otherwise consistent with paragraph (b) of this section, to include only pay band positions. The original competitive area would then include only the remaining positions (i.e., those positions not covered by a pay band).

■ 3. In § 351.403, paragraph (a)(2) is revised to read as follows:

§ 351.403 Competitive level.

(a) * * *

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section for pay band positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

(ii) To establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position of record with other applicable records that document the employee's actual duties and responsibilities.

* * * * *

[FR Doc. E8–18447 Filed 8–8–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket ID OCC–2008–0010]

RIN 1557–AD12

Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (HERA). Section 2503 of the HERA revises the community development investment authority in 12 U.S.C. 24(Eleventh) to permit a national bank to make a broader range of investments designed primarily to promote the public welfare. This interim final rule implements the changes made to section 24(Eleventh) by the HERA.

DATES: *Effective Date:* This rule is effective on August 11, 2008.

Comment Date: Comments must be received by September 10, 2008.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Community Development Investments'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2008–0010'' to submit or view public comments and to view supporting and related materials for this interim final rule. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *E-mail: regs.comments@occ.treas.gov.*

• *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

• *Fax:* (202) 874–4448.

• *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2008–0010'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2008–0010'' to view public comments for this rulemaking action.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Steven VanMeter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090; or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

The Financial Services Regulatory Relief Act of 2006 (FSRRA) [1] made a number of changes to 12 U.S.C. 24(Eleventh), the authorizing statute for the Office of the Comptroller of the Currency's (OCC) community development regulations.[2] Prior to its amendment by the FSRRA, 12 U.S.C. 24(Eleventh) authorized a national bank ''[t]o make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs)'' (the public welfare test). The FSRRA, among other things, narrowed the grant of authority in section 24(Eleventh) by providing that a national bank may ''make investments directly or indirectly, each of which *promotes the public welfare by benefiting primarily* low- and moderate-income communities or families (such as by providing housing, services, or jobs).'' (emphasis added) [3]

On April 24, 2008, the OCC issued a final rule that implemented the FSRRA's narrowing of the public welfare test. In the Notice of Proposed Rulemaking that preceded that final rule, the OCC noted that Congress was considering a bill that would change the language of the public welfare test back to the way it existed prior to the FSRRA changes.[4]

On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (HERA), which, in part, reinstated the pre-FSRRA wording of the public welfare test.[5] Specifically, section 2503 of the HERA revised section 24(Eleventh) to provide that a national bank may ''* * * make investments directly or indirectly, each of which *is designed primarily to promote the public welfare, including the welfare of* low- and moderate-income communities or families (such as by providing housing, services, or jobs)'' (emphasis added).[6] Under section 2503 of the HERA and the revisions made by this interim final rule, national banks and their subsidiaries will now be able to make a broader range of investments.

Description of the Interim Final Rule

This interim final rule makes the following specific revisions to part 24 in order to implement the statutory changes to the public welfare test.

Definition of ''Community and Economic Development Entity'' (CEDE) (§ 24.2(c))

The interim final rule amends the definition of a CEDE in § 24.2(c) to implement the HERA change to the public welfare test. The revised paragraph (c) defines a CEDE as ''an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as ''qualified investments'' under 12 CFR 25.23.''

Removing the Definition of ''Benefiting Primarily Low- and Moderate-Income Areas or Individuals'' (§ 24.2(g))

As indicated above, the FSRRA authorized a national bank and its subsidiaries to make investments that promote the public welfare by ''benefiting primarily'' low- and moderate-income areas or individuals. OCC's rule implementing the FSRRA added a definition for ''benefiting primarily low and moderate-income areas or individuals.'' The HERA revision removed the ''benefiting primarily'' language, thus, this definition is no longer needed and is removed by the interim final rule.

Public Welfare Investments (§ 24.3)

The interim final rule revises § 24.3, which contains the authorization to make investments pursuant to section 24(Eleventh), to conform to the changes made by the HERA.

Examples of Qualifying Public Welfare Investments (§ 24.6)

Section 24.6 contains examples of qualifying public welfare investments. The interim final rule revises the introductory language in § 24.6 to reflect the changes made by section 2503 of the HERA. The interim final rule also adds back, where appropriate, references to investments in ''targeted redevelopment areas.'' These references had been removed by the FSRRA implementing regulation.

Revision to Appendix 1 to Part 24, the CD–1 National Bank Community Development (Part 24) Investments Form

The interim final rule also revises Appendix 1 to part 24, the CD–1 National Bank Community Development (Part 24) Investments Form, to reflect the changes to the regulation.

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[1] Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

[2] 12 CFR part 24 (2008).

[3] Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

[4] 72 FR 36559 (July 3, 2007).

[5] Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

[6] *Id.*

Effective Date; Solicitation of Comments

This interim final rule will become effective immediately upon publication in the **Federal Register**. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' [7] Similarly, an agency may publish a final rule with an immediate effective date if the agency finds good cause and publishes such with the rule. 5 U.S.C. 553(d)(3).

Consistent with section 553(b)(B) of the APA, the OCC finds that good cause exists for a finding that notice and comment are impracticable and contrary to the public interest. In enacting the Foreclosure Prevention Act of 2008 (part of the HERA), which includes these changes to 12 U.S.C. 24(Eleventh), Congress stated that all provisions of that Act are designated as ''emergency requirements and necessary to meet emergency needs.'' [8] An interim final rule will allow national banks and their subsidiaries immediately to make a broader range of investments to promote the public welfare, including investments in distressed communities affected by rising foreclosures. Immediate issuance of this interim final rule furthers the public interest because it will provide national banks and their subsidiaries with additional flexibility to make public welfare investments in low- and moderate-income individuals or areas or targeted redevelopment areas, or that would receive consideration under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) as ''qualified investments.'' For these same reasons, the OCC finds good cause to publish this rule with an immediate effective date. *See* 5 U.S.C. 553(d)(3).

Although notice and comment are not required prior to the effective date of this rule, the OCC invites comment on all aspects of this interim final rule, and intends to revise the interim final rule if necessary or appropriate in light of the comments received.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[9] Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [10]

As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this interim final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this interim final rule.

Executive Order 12866

The OCC has determined that this interim final rule is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this interim final rule will not have an annual effect on the economy of $100 million or more within the meaning of Executive Order 12866. The OCC further concludes that this interim final rule does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this interim final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the interim final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

Authority and Issuance

■ For the reasons set forth in the preamble, part 24 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 1. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481, and 1818.

■ 2. Amend § 24.2 by:
■ a. Revising the first sentence of paragraph (c);
■ b. Removing paragraph (g); and
■ c. Redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively.

The revision reads as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CEDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as ''qualified investments'' under 12 CFR 25.23. * * *

* * * * *

■ 3. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment primarily benefits low- and moderate income individuals, low- and moderate income areas, or other areas targeted by a governmental entity for redevelopment, or the investment would receive consideration under 12 CFR 25.23 as a ''qualified investment.''

■ 4. Amend § 24.6 by:
■ a. Revising the introductory text; and
■ b. Revising paragraphs (b)(1) through (4), (d)(1), and (d)(4).

[7] 5 U.S.C. 553(b)(B).

[8] *See* section 2002 of the HERA, Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

[9] 5 U.S.C. 601(2).

[10] 5 U.S.C. 553(b)(B).

The revisions read as follows:

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

* * * * *

(b) * * *

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or other targeted redevelopment areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments that finance small businesses or small farms, including minority- and women-owned small businesses or small farms, that, although not located in low- and moderate-income areas or targeted redevelopment areas, create a significant number of permanent jobs for low- and moderate-income individuals;

(3) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area or targeted redevelopment area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(4) Investments in low- and moderate-income areas or targeted redevelopment areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(d) * * *

(1) Investments that provide credit counseling, financial literacy, job training, community development research, and similar technical assistance for non-profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment areas, or small businesses, including minority- and women-owned small businesses, located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(4) Investments in minority- and women-owned depository institutions that serve primarily low- and moderate-income individuals or low- and moderate-income areas or targeted redevelopment areas.

■ 5. Revise appendix 1 to part 24 to read as follows:

APPENDIX 1 TO PART 24—CD–1—NATIONAL BANK COMMUNITY DEVELOPMENT (PART 24) INVESTMENTS

BILLING CODE 4810–33–P

Comptroller of the Currency
Administrator of National Banks

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment primarily promotes the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). Part 24 contains the OCC guidelines to determine whether an investment is designed primarily to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 874-4930 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address *(street or P.O. box):*
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address *(street or P.O. box):*	Mailing address *(street or P.O. box)*:
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐
Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(j). Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus. Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification. Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment primarily benefits low- and moderate-income individuals. ☐

   The investment primarily benefits low- and moderate-income areas. ☐

   The investment primarily benefits areas targeted for redevelopment by a government entity. ☐

   The investment is a "qualified investment" under 12 CFR 25.23 for purposes of the Community Reinvestment Act. ☐

2. **Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.**

   a. Dollar amount of the bank's investment that is the subject of this submission: _____.

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. **Please attach a brief description of the bank's investment. (See 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.**

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

   e. The geographic area served by the CEDE.

f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

DESCRIPTION OF THE BANK'S CD INVESTMENT. (See *information previously requested*)

(*Type the description of the bank's Part 24 investment here. You may type as much text as necessary. You will have access to all of MS Word's editing features.*)

Dated: August 5, 2008.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E8–18410 Filed 8–8–08; 8:45 am]

BILLING CODE 4810–33–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM391; Special Conditions No. 25–273–SC]

Special Conditions: Embraer S.A., Model ERJ 190–100 ECJ Airplane; Flight-Accessible Class C Cargo Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer S.A. Model ERJ 190–100 ECJ airplane. This airplane will have novel or unusual design features associated with access during flight of the main deck Class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2194; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Background

Embraer S.A., made the original application for certification of the ERJ 190 on May 20, 1999. The Embraer application includes six different models, the initial variant being designated as the ERJ 190–100. The application was submitted concurrently with that for the ERJ 170–100, which received an FAA type certificate (TC) on February 20, 2004. Although the applications were submitted as two distinct TCs, the airplanes share the same conceptual design and general configuration. On July 2, 2003, Embraer S.A., submitted a request for an extension of its original application for the Embraer S.A., Model ERJ 190 series, with a new application date of May 30, 2001, for establishing the type certification basis. The FAA certification basis was adjusted to reflect this new reference date. In addition, Embraer has elected to voluntarily comply with certain 14 CFR part 25 amendments introduced after the May 30, 2001, application date.

On May 30, 2001, Embraer S.A., amended the application to include the Embraer S.A., Model ERJ 190–100 ECJ. The Embraer S.A., Model ERJ 190–100 ECJ is a derivative of the Embraer S.A.,

Model ERJ 190 which is approved under Type Certificate No. A57NM. The Embraer S.A., Model ERJ 190–100 ECJ is a low wing, transport-category aircraft powered by two wing-mounted General Electric CF34–10E6 turbofan engines. The airplane is a 19 passenger regional jet with a maximum take off weight of 54,500 kilograms (120,151 pounds). The maximum operating altitude and speed are 41,000 feet and 320 knots calibrated air speed (KCAS)/0.82 MACH, respectively. The Embraer S.A., Model ERJ 190–100 ECJ design includes an accessible main deck Class C cargo compartment.

The regulations consider that a ''cargo compartment'' is not intended for access during flight by the traveling public. The intent of the Class C cargo compartment was that it be a self-contained, isolated compartment intended to carry baggage and/or cargo. It was not intended for access during flight. Access into a cargo compartment inherently carries with it an increased level of risk as baggage or cargo could shift, a decompression could occur in the compartment, or a fire could develop during the flight. The FAA considers that any of these threats are beyond passengers' capabilities. In addition, there are security concerns with in-flight access to baggage and/or cargo placed in the Class C cargo compartment.

The FAA acknowledges that an allowance was made specifically for crew access into a Class B cargo compartment for the express purpose of fire fighting. Passengers' access during flight into aft Class B cargo compartments has been permitted in the past for other small aircraft that are operated under part 91 and 135 operations. Passengers' quick access to luggage has been allowed because of the limited duration for use and limited number of passengers possibly affected. These approvals were granted before the increased security concerns and the new regulations imposed by the Transportation Security Administration (TSA) to address the security concerns.

The FAA gave no consideration to a flight-accessible Class C cargo compartment when the classification was first developed, as no manufacturer had ever proposed to incorporate such a feature into their design. Inherently a ''cargo compartment'' was not intended for access, especially by the traveling public.

The FAA acknowledges that a previous Embraer airplane, the Embraer S.A., Model EMB 135BJ, has a flight-accessible Class C cargo compartment that was approved using an equivalent level of safety finding. The Embraer S.A., Model EMB 135BJ design is similar to the proposed design for the ERJ 190–100 ECJ. The Embraer S.A., Model EMB 135BJ approval was granted before the increased security concerns and the new regulations imposed by the TSA to address security concerns. We have determined that because the existing airworthiness standards do not contain adequate or appropriate safety standards, relative to cargo compartment accessibility by passengers during flight, special conditions are the appropriate method for this and all future accessible Class C cargo compartments.

Type Certification Basis

Under the provisions of § 21.101, Embraer S.A. must show that the Embraer S.A., Model ERJ 190–100 ECJ meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A57NM or the applicable regulations in effect on the date of application for the change to the ERJ 190–100 ECJ. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the Embraer S.A., Model ERJ 190–100 ECJ because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Embraer S.A., Model ERJ 190–100 ECJ must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Embraer S.A., Model ERJ 190–100 ECJ will incorporate a novel or unusual design feature of in-flight access to a Class C cargo compartment.

Discussion

The FAA considers that Class C cargo compartment access during flight may impact the isolation of the passenger cabin from the cargo compartment, which is needed to protect the passengers from any fire and smoke that may start within the cargo compartment, as required by § 25.857(c). In addition, in-flight access to the Class C compartment creates unique hazards resulting from passengers having access to cargo and baggage in the compartment. These hazards include safety for the persons entering the cargo compartment, possible hazards to the airplane as a result of this access, and security concerns with access to the baggage and/or cargo. These special conditions provide additional requirements necessary to ensure sufficient cabin isolation from fire and smoke in this unusual design configuration, and for passenger safety while occupying the Class C compartment during flight.

Security

The FAA has been in contact with the TSA to understand the security concerns with passengers having access in-flight to baggage and/or cargo, and specifically with regard to unscreened (checked) baggage/cargo. The TSA has provided the following information to clarify the regulations concerning access to cargo compartments by passengers.

Aircraft operators holding operating certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations, and private charter passenger operations must have an aircraft operator security program. For U.S. flag carriers 49 CFR 1544 regulates the operator security program. Specifically, 49 CFR 1544.101(a)–(i) describes the type of program an aircraft operator must adopt depending on the type of aircraft operation. For the vast majority of operations in-flight access to checked baggage and/or cargo by passengers is NOT permitted by the aircraft operator security program. Aircraft operators should contact their Principal Security Inspector (PSI) concerning in-flight access to checked baggage and/or cargo by passengers.

For airplanes not operated for hire or offered for common carriage (e.g., operation under FAA operating rules 14 CFR parts 91 or 125), flight-accessibility to baggage and/or cargo placed in the Class C cargo compartment is controlled by the operator of the airplane. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable. These airplane operators do not hold

operating certificates under 14 CFR part 119.

For airplanes operated for hire or for common carriage (e.g., operation under FAA operating rules 14 CFR part 119), the TSA regulations provided in 49 CFR 1544.203 prohibit in-flight access to checked baggage and cargo. Checked baggage and cargo do not pass through the screening required of carry-on baggage, and thus may introduce a security concern if passengers are provided in-flight access.

Note: These special conditions are specific to the in-flight accessible Class C cargo compartment. Security requirements for occupants and for baggage/cargo placed in other locations continue to be subject to the screening requirements and operator's security program as identified in 49 CFR 1544.

Fire Protection and Alerting

It is the FAA's position that the threat of fire is of paramount concern, and therefore prompt crew action to fight the fire must be taken to prevent a fire from threatening the safety of the airplane.

For Class C cargo compartments, the means of controlling a fire is by flooding the compartment with an extinguishing agent. These extinguishing agents are hazardous to humans. In the event of smoke detection, the flightcrew should ensure that the cargo compartment is not occupied before they discharge the extinguishing agent. To address this concern, a warning system is provided to the flight crew to alert them when a person is in the cargo compartment.

After the extinguishing agent has been discharged into the compartment, there must be a means of alerting a person(s) not to enter the compartment. It must be located adjacent to the entry/exit door that provides access into the compartment. Access into the cargo compartment must be prevented after discharge of the extinguishing agent to prevent persons from being exposed to the extinguishing agent and to keep the extinguishing agent in the compartment to control the fire.

Passengers in the cabin are alerted when oxygen is needed. A person in the cargo compartment would not be alerted when oxygen is needed. To address this concern, an aural and visual indication system within the cargo compartment is required to alert the person(s) that oxygen is required. An oxygen dispensing unit must be provided adjacent to the entry door into the cargo compartment to have oxygen readily available for the person leaving the compartment. The oxygen supply lines must not be routed into the cargo compartment because that would provide a source of oxygen to the cargo which would feed a fire.

Cargo Restraint

If a net is used as the primary means of retention of the cargo, an untrained person accessing a cargo compartment may not be capable of securing the net correctly to maintain the retention of the cargo. The improperly restrained cargo could be a hazard in flight to the safe operation of the airplane and a hazard to the occupants under crash load conditions.

Discussion of Comments

A notice of proposed special conditions No. 25–08–05–SC for the Embraer S.A., Model ERJ 190–100 ECJ airplanes was published in the **Federal Register** on April 21, 2008 (73 FR 21286).

A comment was received from Embraer S.A.

Requested change: Embraer agreed with all proposed special conditions except for the private use only limitation in Condition No. 8. Embraer noted that 49 CFR 1544.203(d)(2) requires the operator to prevent access to checked baggage. Embraer also noted that because the ERJ 190–100 ECJ Class C cargo compartment is accessible in-flight, all baggage placed there is not checked baggage, but rather is considered accessible subject to the screening requirements of 49 CFR 1544.201. Embraer proposed to include guidance in the ERJ 190–100 ECJ operational publications describing the applicable TSA regulations and how the accessible main deck Class C compartment should be treated in compliance with those regulations. Embraer further noted that the security issue is relevant to in-flight baggage accessibility, and is not related to the unique feature (built-in fire extinguishing) of the ERJ 190–100 ECJ Class C compartment, and that many other airplanes have been certified since the EMB–135BJ with flight accessible compartments, without any private use limitations. Embraer believes that the private use, not-for-hire limitation proposed by the FAA is not necessary and, if imposed, would preclude the ERJ 190–100 ECJ from operating in the charter market. Embraer proposed that when all of the in-flight accessible cargo/baggage is screened as carried on baggage/cargo, the airplane should be permitted to be operated for hire and for common carriage.

FAA Disposition: We partially agree with the Embraer comments. When all of the occupants and in-flight accessible baggage/cargo are subject to the accessible baggage screening requirements identified in 49 CFR part 1544 there would not be a need to limit the operation of the airplane to private use, not for common carriage. We have revised Condition No. 8 to allow operation for hire and common carriage when the occupants and the baggage/cargo that is accessible in-flight are subject to the screening requirements of 49 CFR part 1544. It should be noted that the screening of the occupants and carry on baggage is addressed by the operators' security program as identified in 49 CFR part 1544. AFM Limitations are necessary to ensure that flight crews are aware of the unique security requirements associated with in-flight accessible compartments when operating for hire or for common carriage. The FAA has imposed similar limitations on other programs initiated since increased security requirements were introduced, and intends to continue to do so for future projects that introduce in-flight accessible cargo compartments, regardless of the classification of those compartments per 14 CFR 25.857.

Applicability

As discussed above, these special conditions are applicable to the Embraer S.A., Model ERJ 190–100 ECJ. Should Embraer S.A. apply at a later date for a change to the type certificate on the same type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Embraer S.A., Model ERJ 190–100 ECJ airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S.A. Model ERJ 190–100 ECJ airplanes.

1. There must be a clear, visual message in the cockpit to advise the flightcrew when the main deck Class C cargo compartment is occupied.

2. There must be means provided to keep the cargo door open while the

cargo compartment is occupied. There must be a placard located on or adjacent to the cargo door instructing occupants that the door must be closed and latched at all times except when someone is in the cargo compartment. This placard must also instruct the person entering the cargo compartment to keep the door open when they are in the cargo compartment and to immediately close and latch the door when they exit the cargo compartment.

3. There must be a (on/off) visual advisory/warning stating ''Do Not Enter'' (or similar words) to be located outside of and on or near the main entry door/hatch to the main deck cargo compartment. The advisory/warning is to be controlled from the flight deck.

4. There must be an aural and visual warning provided in the baggage compartment to alert an occupant when an oxygen mask must be donned immediately.

5. Oxygen dispensing units must be automatically presented and immediately available to an occupant(s) of the baggage compartment when they exit the compartment. For these special conditions, immediately available means the oxygen dispensing units are located in the passenger cabin near the main entry door/hatch to the main deck cargo compartment (no oxygen supply lines are allowed to be routed into the compartment). The number of oxygen dispensing units must be equal to the number of occupants allowed in the cargo compartment. There must be a placard located on or adjacent to the cargo door instructing occupants of the maximum number of occupants allowed in the cargo compartment.

6. For cargo and baggage placed in the baggage compartment whose primary retention means is by net, the net must be constructed so that the means of opening and closing or securing the net is easily identified and operated.

7. These special conditions apply to main deck accessible Class C cargo compartments with volumes of 10 m^3 or less. Class C cargo compartments that are accessible to passengers with a volume greater than 10 m^3 may be approved, but would likely require additional limitations or provisions to mitigate the larger volume. Note that there may also be a maximum volume above which access is not acceptable.

8. Operational limitations: The airplane has operational limitations associated with the level of screening required for baggage/cargo that is placed in the in-flight accessible Class C cargo compartment. These limitations must be documented in the Airplane Flight Manual (AFM).

(a) When the airplane is not operated for hire or offered for common carriage screening of the baggage/cargo placed in the in-flight accessible Class C compartment is the responsibility of the operator of the airplane. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable.

(b) When the airplane is operated for hire or operated for common carriage, the baggage/cargo placed in the in-flight accessible Class C compartment is subject to the screening requirements and operators security program as identified in 49 CFR part 1544.

Issued in Renton, Washington, on July 31, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–18474 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29316; Directorate Identifier 2007–CE–078–AD; Amendment 39–15334; AD 2008–02–04]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aviation Corporation Model EA500 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2008–02–04, which was published in the **Federal Register** on January 22, 2008 (73 FR 3618), and applies to all Eclipse Aviation Corporation (Eclipse) Model EA500 airplanes. This AD requires incorporating a modification of the angle of attack (AOA) system, limits the applicability to airplanes under S/N 000065, and retains the operating limitations from AD 2007–13–11 until the modification is incorporated. The FAA incorrectly referenced the issue date of the AD as ''January 9, 2007'' instead of ''January 9, 2008.'' This document corrects the issue date.

DATES: The effective date of this AD remains February 26, 2008, since the incorrect reference of the issue date of AD 2008–02–04 does not affect compliance.

FOR FURTHER INFORMATION CONTACT: Al Wilson, Flight Test Pilot, Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone: (817) 222–5146; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

AD 2008–02–04, Amendment 39–15334 (73 FR 3618, January 22, 2008), affects Eclipse Model EA500 airplanes and currently:

- Requires incorporating a modification of the angle of attack (AOA) probe;
- Limits the applicability to airplanes under S/N 000065; and
- Retains the operating limitations from AD 2007–13–11 until the modification is incorporated.

The FAA incorrectly referenced the issue date as ''January 9, 2007'' instead of ''January 9, 2008.'' This document corrects the issue date.

Need for the Correction

This correction is needed to reflect the correct issue date on the AD.

Correction of Publication

Accordingly, the publication of January 22, 2008 (73 FR 3618), which was the subject of FR Doc. E8–751, is corrected as follows:

Section 39.13 [Corrected]

On page 3619, in the third column, in the sixth and seventh lines from the bottom, under the heading **§ 39.13 [Amended]**, replace ''January 9, 2007'' with ''January 9, 2008.''

Action is taken herein to correct this reference in the AD.

The effective date of this AD remains February 26, 2008, since the incorrect reference of the issue date of AD 2008–02–04 does not affect compliance.

Issued in Kansas City, Missouri, on August 1, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–18227 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0375; Directorate Identifier 2007–NM–272–AD; Amendment 39–15627; AD 2008–16–09]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding two existing airworthiness directives (ADs), which apply to all Short Brothers Model SD3–60 airplanes. One of the ADs currently requires inspection of the welded joints of the balance weight brackets for the elevator trim tabs for cracking; repetitive inspections, as applicable; and corrective actions including the eventual replacement of all brackets. The other AD currently requires, for certain airplanes, repetitive inspections for cracking of the balance weight brackets and replacement of any cracked bracket, and provides for an optional terminating action for the repetitive inspections. This new AD requires an additional inspection to detect cracks of the balance weight brackets, applicable related investigative and corrective actions, and replacement of a certain balance weight bracket when it has reached its maximum life limit. This AD results from a report indicating that several reworked balance weight brackets have exhibited signs of premature failure. We are issuing this AD to prevent failure of the balance weight brackets of the elevator trim tabs, which could cause loss of the balance weight. This could result in incorrect trim during takeoff and landing, and reduced controllability of the airplane.

DATES: This AD becomes effective September 15, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 15, 2008.

On March 14, 2005 (70 FR 9212, February 25, 2005), the Director of the Federal Register approved the incorporation by reference of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004.

On August 3, 2004 (69 FR 38813, June 29, 2004), the Director of the Federal Register approved the incorporation by reference of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003.

ADDRESSES: For service information identified in this AD, contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–13–08, amendment 39–13690 (69 FR 38813, June 29, 2004); and AD 2005–04–13, amendment 39–13985 (70 FR 9212, February 25, 2005). The existing ADs apply to all Short Brothers Model SD3–60 airplanes. That NPRM was published in the **Federal Register** on April 1, 2008 (73 FR 17260). That NPRM proposed to retain the requirements of the existing ADs. That NPRM also proposed to require an additional inspection to detect cracks of the balance weight brackets, applicable related investigative and corrective actions, and replacement of a certain balance weight bracket when it has reached its maximum life limit.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2004–13–08).	12	$80	(1)	$960, per inspection cycle	21	$20,160, per inspection cycle.
Replacement (required by AD 2004–13–08).	8	80	$632	$1,272	21	$26,712.
Inspections (required by AD 2005–04–13).	12	80	(1)	$960, per inspection cycle	21	$20,160, per inspection cycle.
Inspection (new required action).	12	80	(1)	$960, per inspection cycle	21	$20,160, per inspection cycle.
Replacement (new required action).	8	80	864	$1,504, per replacement cycle.	21	$31,584, per replacement cycle.

[1] None.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendments 39–13690 (69 FR 38813, June 29, 2004), and 39–13985 (70 FR 9212, February 25, 2005), and by adding the following new airworthiness directive (AD):

2008–16–09 Short Brothers PLC: Amendment 39–15627. Docket No. FAA–2008–0375; Directorate Identifier 2007–NM–272–AD.

Effective Date

(a) This AD becomes effective September 15, 2008.

Affected ADs

(b) This AD supersedes ADs 2004–13–08 and 2005–04–13.

Applicability

(c) This AD applies to all Short Brothers Model SD3–60 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that several reworked balance weight brackets have exhibited signs of premature failure. We are issuing this AD to prevent failure of the balance weight bracket of the elevator trim tab, which could cause loss of the balance weight. This could result in incorrect trim during takeoff and landing, and reduced controllability of the airplane.

Compliance

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

Requirements of AD 2004–13–08

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in paragraphs (g) through (j) of this AD, means the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; or Revision 1, dated June 20, 2005.

Initial Inspection

(g) Within 2 months after August 3, 2004 (the effective date of AD 2004–13–08): Do a dye penetrant inspection for cracking in the welded joints of the balance weight brackets for the left and right elevator trim tabs, in accordance with the service bulletin.

Investigative and Corrective Actions if No Cracking Is Found

(h) If no cracking is found during the inspection required by paragraph (g) of this AD, do the actions required by paragraphs (h)(1) and (h)(2) of this AD at the applicable compliance times.

(1) Repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 4,800 flight hours until the bracket is replaced per paragraph (h)(2) or (i) of this AD.

(2) Prior to the accumulation of 28,800 total flight hours, or within 6 months after August 3, 2004, whichever occurs later: Replace any bracket that has not been replaced per paragraph (i) of this AD with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (g) of this AD. Replace in accordance with the service bulletin. Replacement of the brackets constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

Corrective Actions if Any Cracking Is Found

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, accomplish the applicable action in paragraph (i)(1) or (i)(2) of this AD in accordance with the service bulletin.

(1) For airplanes that have accumulated less than 28,800 flight hours and on which all cracking on brackets is less than 0.25 inch in length: Repair the affected bracket in accordance with part B of the service bulletin (including the additional dye penetrant inspection of the repaired welded joint) and repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 4,800 flight hours; or replace the bracket in accordance with paragraph (h)(2) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections.

(2) For any airplane on which any cracking on a bracket is 0.25 inch in length or greater, and for any airplane that has accumulated 28,800 flight hours or more on which any cracking of any length is found on a bracket: Replace the affected bracket with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (g) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections required by paragraph (i)(1) of this AD.

Refitting

(j) Before further flight following any inspection per paragraph (g) or (h) of this AD; or before further flight following repair or replacement of a bracket per paragraph (h)(2) or (i) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the service bulletin. Where the service bulletin specifies to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(k) As of August 3, 2004, no person may install on any airplane a balance weight bracket unless the welded joint has been inspected in accordance with paragraph (g) of this AD.

Requirements of AD 2005–04–13

Service Bulletin Reference

(l) The following information applies to the service bulletin referenced in paragraphs (l) through (o) of this AD:

(1) The term ''service bulletin,'' as used in paragraphs (l) through (o) of this AD, means

the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004.

(2) Although the service bulletin specifies to return subject parts to the manufacturer, this AD does not include that requirement.

Repetitive Inspections

(m) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4'': Prior to the accumulation of 250 flight hours since installation of the subject balance weight bracket of the elevator trim tab, or within 30 flight hours after March 14, 2005 (the effective date of AD 2005–04–13), whichever is later, do a dye penetrant inspection for cracking of the balance weight brackets for the left and right elevator trim tabs, in accordance with the service bulletin.

(1) For a balance weight bracket on which no cracking is found: Do paragraph (o) of this AD, and repeat the inspection thereafter at intervals not to exceed 250 flight hours until paragraph (n) of this AD is accomplished.

(2) For a balance weight bracket on which any cracking is found: Before further flight, replace the bracket with a new or reworked balance weight bracket that conforms to the approved design standard in accordance with the service bulletin, and do paragraph (o) of this AD.

Optional Terminating Action

(n) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4'': Replacement of any subject balance weight bracket with a new or reworked balance weight bracket that conforms to the approved design standard, in accordance with the service bulletin, constitutes terminating action for the repetitive inspections required by paragraph (m) of this AD for the replaced bracket.

Refitting

(o) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4'': Before further flight following any inspection or replacement of a bracket in accordance with paragraphs (m) and (n) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the service bulletin. Where the service bulletin specifies to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(p) For all airplanes: As of March 14, 2005, no person may install, on any airplane subject to this AD, a balance weight bracket having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4,'' unless the bracket is also marked ''Rework batch number R–Bxxxxx'' (where ''xxxxx'' is a number).

New Requirements of This AD

Inspection(s) and Replacements

(q) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA manufactured in the year 2003 or 2004, including reworked brackets, installed in accordance with paragraph (h)(2), (i)(2), or (n) of this AD, as applicable: Do the actions specified in paragraphs (q)(1) and (q)(2) of this AD in accordance with Parts A and B of the Accomplishment Instructions of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007.

(1) Within 30 flight hours after the effective date of this AD, or within 250 flight hours since installation of the balance weight brackets of the elevator trim tabs or since the last inspection required by paragraph (g), (h)(1), (i)(1), or (m) of this AD, whichever occurs later: Do a dye penetrant inspection to detect cracks of the balance weight brackets of the elevator trim tabs.

(i) If no crack is detected, repeat the dye penetrant inspection at intervals not to exceed 250 flight hours, until the replacement required by paragraph (q)(2) of this AD is done.

(ii) If any crack is detected, before further flight, do the replacement specified in paragraph (q)(2) of this AD.

(2) Before the accumulation of 1,750 flight hours since installation of the balance weight brackets of the elevator trim tabs, or within 180 days after the effective date of this AD, whichever occurs later: Replace the balance weight brackets with new balance weight brackets manufactured in 2005 or later. Thereafter, replace any balance weight bracket with a new bracket manufactured in 2005 or later at intervals not to exceed the accumulation of 1,750 flight hours on that bracket. Accomplishment of the initial replacement ends the repetitive inspection requirements of this AD.

(r) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–31–6213xB inspected in accordance with paragraph (g), (h)(1), or (i)(1) of this AD and retained or refitted following approved repair in accordance with paragraph (j) of this AD: Do the actions specified in paragraphs (r)(1) and (r)(2) of this AD in accordance with Parts A and B of the Accomplishment Instructions of Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

(1) Within 4,800 flight hours since last inspection, or within 180 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 4,800 flight hours: Do a dye penetrant inspection to detect cracks of the balance weight brackets of the elevator trim tabs.

(i) If no crack is detected, repeat the dye penetrant inspection at intervals not to exceed 4,800 flight hours, until the replacement required by paragraph (r)(2) of this AD is done.

(ii) If any crack is detected, before further flight, do the replacement specified in paragraph (r)(2) of this AD.

(2) Before the accumulation of 28,800 flight hours since any balance weight bracket of the elevator trim tabs is new, or within 180 days after the effective date of this AD, whichever occurs later: Replace the balance weight brackets with new balance weight brackets manufactured in 2005 or later. Thereafter, replace any balance weight bracket with a new bracket manufactured in 2005 or later at intervals not to exceed the accumulation of 28,800 flight hours on that bracket. Accomplishment of the initial replacement ends the repetitive inspection requirements of this AD.

Part Installation

(s) For all airplanes: As of the effective date of this AD, no person may install, on any airplane, a balance weight bracket of the elevator trim tab manufactured earlier than 2005.

Alternative Methods of Compliance (AMOCs)

(t) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(u) European Aviation Safety Agency emergency airworthiness directive 2007–0107–E, dated April 18, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(v) You must use the service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Short Brothers Alert Service Bulletin SD360–55–A21	Original	December 16, 2004.
Short Brothers Service Bulletin SD360–55–20	Original	June 26, 2003.
Shorts Alert Service Bulletin SD360–55–A21	Revision 1	March 29, 2007.
Shorts Service Bulletin SD360–55–20	Revision 1	June 20, 2005.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE—Continued

Service Bulletin	Revision level	Date
Shorts Service Bulletin SD360–55–20	Revision 2	March 29, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; and Shorts Alert Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On March 14, 2005 (70 FR 9212, February 25, 2005), the Director of the Federal Register approved the incorporation by reference of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004.

(3) On August 3, 2004 (69 FR 38813, June 29, 2004), the Director of the Federal Register approved the incorporation by reference of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003.

(4) Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–17744 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0450; Directorate Identifier 2007–SW–39–AD; Amendment 39–15634; AD 2008–16–16]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 230 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for BHTC Model 230 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of Canada which indicates that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to the possibility of parts interference. The cumulative effect of individual part tolerances resulting in the total assemblage of those parts being out of tolerance could result in the tail rotor yoke striking another part other than the flapping stop (parts interference) as cited in the MCAI. Also, the misalignment of the tail rotor counterweight bellcrank may result in higher tail rotor pedal forces and a higher pilot workload after failure of the No. 1 hydraulic system. Both parts interference and the misaligned counterweight bellcrank create an unsafe condition. This AD requires actions that are intended to address these unsafe conditions.

DATES: This AD becomes effective on September 15, 2008.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of September 15, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the Ad Docket: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Tyrone Millard, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5439, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the BHTC Model 230 helicopters on April 14, 2008. That NPRM was published in the **Federal Register** on April 23, 2008 (73 FR 21855). That NPRM proposed to require, within the next 150 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, adjusting the rigging of the tail rotor pitch change mechanism, and if a gap exists between the tail rotor yoke and the flapping stop, replacing the tail rotor yoke with an airworthy tail rotor yoke. If no gap exists between the tail rotor yoke and the flapping stop at either full right or full left pedal position, adjusting the tail rotor pitch change mechanism and the tail rotor pedal forces was proposed.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Related Service Information

Bell Helicopter Textron has issued Alert Service Bulletin 230–07–36, dated January 9, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI

The compliance times in this AD differ from the MCAI in that compliance is required within the next 150 hours TIS or at the next annual inspection, whichever occurs first, instead of ''at the next 150 hour or annual inspection but no later than 31 December 2007.''

Costs of Compliance

We estimate that this AD will affect about 20 helicopters of U.S. registry. We also estimate that it will take 2 work-hours per helicopter to adjust the

rigging of the tail rotor pitch change mechanism. The average labor rate is $80 per work-hour. A replacement yoke will cost about $21,218, assuming the part is no longer under warranty. However, because the service information lists this part as covered under warranty, we have assumed that there will be no charge for this part, if needed. Therefore, as we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these assumptions and figures, we estimate the cost of the AD on U.S. operators to be $3,200, or $160 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–16 Bell Helicopter Textron Canada: Amendment 39–15634; Docket No. FAA–2008–0450; Directorate Identifier 2007–SW–39–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on September 15, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Bell Helicopter Textron Canada (BHTC) Model 230 helicopters, certificated in any category.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of Canada which indicates that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to the possibility of parts interference. This ''possibility of parts interference'' occurs because the cumulative effect of the tolerances on the various parts may result in the total assemblage outboard of the counterweight bellcrank being out of tolerance and the tail rotor yoke may contact nut, part number (P/N) 222–012–737–001, before contacting the flapping stop. Further, the manufacturer has indicated that the tail rotor counterweight bellcranks may be misaligned, resulting in higher tail rotor pedal forces and higher pilot workload after failure of the No. 1 hydraulic system. Both the parts interference and the higher pedal forces constitute unsafe conditions.

Actions and Compliance

(e) Within the next 150 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, unless already done, do the following:

(1) Adjust the rigging of the tail rotor pitch change mechanism in accordance with the Accomplishment Instructions, paragraphs 1 and 2, in Bell Helicopter Textron Alert Service Bulletin 230–07–36, dated January 9, 2007 (ASB).

(2) If either at full left pedal position or full right pedal position a gap exists between the tail rotor yoke and the flapping stop, replace the tail rotor yoke with an airworthy tail rotor yoke.

(3) If no gap exists between the tail rotor yoke and the flapping stop at either full right or full left pedal position, measure the gap between the tail rotor yoke and nut, P/N 222–012–731–001, adjust the tail rotor pitch change mechanism, and adjust the tail rotor pedal forces in accordance with the Accomplishment Instructions, paragraphs 4. through 6. of the ASB.

Differences Between This AD and the MCAI

(f) This AD requires compliance within the next 150 hours TIS or at the next annual inspection, whichever occurs first, instead of ''at the next 150 hour or annual inspection but no later than 31 December 2007.''

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tyrone Millard, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5439, fax (817) 222–5961.

Related Information

(h) MCAI Transport Canada Airworthiness Directive CF–2007–12, dated August 24, 2007, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) ATA Code JASC 6720, Tail Rotor Control System, Tail Rotor Pitch Change.

Material Incorporated by Reference

(j) You must use the specified portions of Bell Helicopter Textron Alert Service Bulletin 230–07–36, dated January 9, 2007, to do the actions required.

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

(2) For service information identified in this AD, contact Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas on July 27, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–17990 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0178; Directorate Identifier 2007–SW–20–AD; Amendment 39–15622; AD 2008–16–04]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 222, 222B, and 222U Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for BHTC Model 222, 222B, and 222U helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The aviation authority of Canada, with which we have a bilateral agreement, states in the MCAI: ''It has been determined that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to possibility of parts interference.'' The cumulative effect of individual part tolerances resulting in the total assemblage of those parts being out of tolerance could result in the tail rotor yoke striking another part other than the flapping stop (parts interference) cited in the MCAI. Also, the misalignment of the tail rotor counterweight bellcrank may result in higher tail rotor pedal forces and a higher pilot workload after failure of the No. 1 hydraulic system. Both parts interference and the misaligned counterweight bellcrank create an unsafe condition.

We are issuing this AD to require actions that are intended to address these unsafe conditions.

DATES: This AD becomes effective on September 15, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 15, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the AD Docket: The AD docket contains the Notice of Proposed Rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5227) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Tyrone Millard, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5439, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the following BHTC helicopters:

Model	Serial No. (S/N)
222	47006 through 47089.
222B	47131 through 47156.
222U	All.

That NPRM was published in the **Federal Register** on November 16, 2007 (72 FR 64542). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states: ''It has been determined that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to possibility of parts interference.'' Because the cumulative effect of the tolerances on the various parts may result in the total assemblage outboard of the counterweight bellcrank being out of tolerance, the tail rotor yoke may contact the nut, part number (P/N) 222–012–731–001, before contacting the flapping stop, resulting in less tail rotor travel. Additionally, the manufacturer has indicated that the tail rotor counterweight bellcranks may be misaligned, resulting in higher tail rotor pedal forces and higher pilot workload after failure of the #1 hydraulic system. Both the parts interference and the higher pedal forces constitute unsafe conditions. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Relevant Service Information

Bell Helicopter Textron has issued Alert Service Bulletin (ASB) No. 222–07–104 and ASB No. 222U–07–75, both dated January 9, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, this AD requires compliance within the next 150 hours time-in-service or at the next annual inspection, whichever occurs first, instead of ''at the next 150 hour or annual inspection, but no later than 31 December 2007.'' In making this change, we do not intend to differ substantively from the information provided in the MCAI. This difference is highlighted in the ''Differences Between this AD and the MCAI'' section in the AD.

Costs of Compliance

We estimate that this AD will affect about 86 products of U.S. registry. Also, we estimate that it will take 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. A replacement yoke will cost about $21,218, assuming the part is no longer under warranty. However, because the service information lists this part as covered under warranty, we have assumed that there will be no charge for this part. Therefore, as we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $13,760, or $160 per helicopter.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–04 Bell Helicopter Textron Canada: Amendment 39–15622; Docket No. FAA–2007–0178; Directorate Identifier 2007–SW–20–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on September 15, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to the Model 222, serial numbers (S/N) 47006 through 47089; Model 222B, S/N 47131 through 47156, and Model 222U, all S/N, helicopters, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states: ''It has been determined that the existing rigging procedures for the tail rotor pitch change mechanism have to be changed due to possibility of parts interference.'' This ''possibility of parts interference'' occurs because the cumulative effect of the tolerances on the various parts may result in the total assemblage outboard of the counterweight bellcrank being out of tolerance and the tail rotor yoke may contact the nut, part number (P/N) 222–012–731–001, before contacting the flapping stop. Further, the manufacturer has indicated that the tail rotor counterweight bellcranks may be misaligned, resulting in higher tail rotor pedal forces and higher pilot workload after failure of the #1 hydraulic system. Both the parts interference and the higher pedal forces constitute unsafe conditions. This AD requires actions that are intended to address these unsafe conditions.

Actions and Compliance

(e) Within the next 150 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, unless already done, do the following actions:

(1) Adjust the rigging of the tail rotor pitch change mechanism in accordance with the Accomplishment Instructions, paragraphs 1 and 2, of the applicable Bell Helicopter Textron Alert Service Bulletin (ASB) listed in the following Table 1:

TABLE 1

Helicopter model	Applicable ASB No. & date
222 and 222B	No. 222–07–104, dated January 9, 2007.
222U	No. 222U–07–75, dated January 9, 2007.

(2) If either at full left pedal position or full right pedal position a gap exists between the tail rotor yoke and the flapping stop, replace the tail rotor yoke with an airworthy tail rotor yoke.

(3) If no gap exists between the tail rotor yoke and the flapping stop at either full left pedal position or full right pedal position, measure the gap between the tail rotor yoke and nut, P/N 222–012–731–001, adjust the tail rotor pitch change mechanism, and adjust the tail rotor pedal forces in accordance with the Accomplishment Instructions, paragraphs 4 through 6, of the applicable ASB listed in Table 1 of this AD.

Differences Between This AD and the MCAI

(f) This AD requires compliance within the next 150 hours TIS or at the next annual inspection, whichever occurs first, instead of ''at the next 150 hour or annual inspection but no later than 31 December 2007.''

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Tyrone Millard, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5439, fax (817) 222–5961 has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) MCAI Transport Canada Airworthiness Directive No. CF–2007–07, dated April 11, 2007, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) Air Transport Association of America (ATA) Code JASC 6720: Tail Rotor Control System, Tail Rotor Pitch Change.

Material Incorporated by Reference

(j) You must use the specified portions of Bell Helicopter Textron ASB No. 222–07–104 or No. 222U–07–75, both dated January 9, 2007, to do the actions required.

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

(2) For service information identified in this AD, contact Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76193; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on July 18, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–17991 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0036; Directorate Identifier 2007–NE–22–AD; Amendment 39–15636; AD 2008–16–18]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

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

ACTION: Final rule.

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

Recently an RB211 HP turbine disc has been found with a crack which had propagated further than expected from the risk model that was used to establish the original inspection.

We are issuing this AD to detect cracks that could cause the high pressure (HP) turbine disc to fail and result in uncontained failure of the engine.

DATES: This AD becomes effective September 15, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 15, 2008.

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

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 24, 2007 (72 FR 60293). That NPRM proposed to correct an unsafe condition for the specified products. The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, has issued United Kingdom Airworthiness Directive G–2006–0002, dated February 13, 2006, to correct an unsafe condition for the specified products. The CAA AD states:

A population of HP turbine discs that were manufactured between 1989–1999 and which were subject to possible machining anomalies, were believed to have an increased chance of suffering from cooling air hole cracking, compared to the general fleet population of HP turbine discs. As a result of this risk, Rolls-Royce issued Non-Modification Service Bulletin (NMSB) 72–C816, recommending in-service inspections of the subject discs.

Recently an RB211 HP turbine disc has been found with a crack which had propagated further than expected from the risk model that was used to establish the original inspection defined in the above NMSB; This has led to the need for a revision of the original inspection requirements.

An HP turbine disc fracture would be uncontained and create a potential unsafe condition. Accordingly, this AD introduces revised inspection requirements to reflect the increased risk of HP turbine disc cracking and potential disc fracture.

You may obtain further information by examining the CAA AD in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM.

Editorial Change for Clarity

We changed the paragraph layering in paragraph (e) of the regulatory text to clarify the requirements for disks that have a serial number in Table 1 of this AD and disks that don't have a serial number in Table 1 of this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 72 engines of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $15,000 per product. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,137,600. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–16–18 Rolls-Royce plc: Amendment 39–15636. Docket No. FAA–2007–0036; Directorate Identifier 2007–NE–22–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 15, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce (RR) RB211–524 series turbofan engines with certain high pressure (HP) turbine discs installed. These engines are installed on, but not limited to, Boeing 747 series and 767 series airplanes and Lockheed L1011 series airplanes.

Reason

(d) Recently an RB211 HP turbine disc has been found with a crack which had propagated further than expected from the risk model that was used to establish the original inspection.

We are issuing this AD to detect cracks that could cause the HP turbine disc to fail and result in uncontained failure of the engine.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Carry out the eddy current inspection as detailed in Section 3—Accomplishment Instructions of Rolls-Royce NMSB RB.211–72–AE718, dated January 24, 2006.

(2) Carry out the eddy current inspection in accordance with the following schedule:

(i) The HP disc serial numbers listed in Table 1 are to be inspected as follows:

TABLE 1—HP DISC SERIAL NUMBERS BY PART NUMBER

Part No.	Serial No.
UL29473	LAQDY6043
UL29473	LAQDY6048

TABLE 1—HP DISC SERIAL NUMBERS BY PART NUMBER—Continued

Part No.	Serial No.
UL29473	LAQDY6079
UL29473	LDRCZ10057
UL29473	LDRCZ10264
UL29473	LDRCZ10415
UL29473	LDRCZ11402
UL29473	LDRCZ11425
UL29473	LDRCZ11497
UL29473	LDRCZ11663
UL29473	LDRCZ11679
UL29473	LDRCZ12301
UL29473	LDRCZ12308
UL29473	LDRCZ12316
UL29473	LDRCZ12319
UL29473	LQDY6957
UL29473	LQDY9075
UL29473	LQDY9084
UL29473	LQDY9557
UL29473	LQDY9906
UL29473	LQDY9956
UL29473	LQDY9970
UL29473	LQDY9985
UL29472	LQDY9125
UL29472	LQDY9554
UL29472	LQDY9582
UL29472	LQDY9895
UL29472	LQDY9910
UL29472	LQDY9947
UL29472	LQDY9960
UL24994	LQDY6777
UL24994	LQDY6792
UL24994	LQDY6859
UL24994	LQDY6860
UL24994	LQDY6866
UL24994	LQDY6869
UL24994	LQDY6934
UL24994	LQDY6946
UL24994	LQDY6963
UL23166	LQDY6745
UL23166	LQDY6846
UL23166	LQDY6848
UL23166	LQDY6954
FK24790	LDRCZ12492
FK24790	LDRCZ12694

(A) For all RB211–524 engine marks except RB211–524D4 variants:

(*1*) If the HP turbine disc cycles are greater than 6150 cycles since new on the effective date of this AD, inspect the HP turbine disc within 500 cycles after the effective date of this AD.

(*2*) If the HP turbine disc cycles are less than 6150 cycles since new on the effective date of this AD, inspect the disc by whichever is the soonest of the conditions below:

(*i*) Prior to reaching 6650 cycles since new. The HP turbine disc life at inspection must be greater than 700 cycles since new.

(*ii*) At next shop visit where the HP turbine rotor is removed from the Combustor Outer Case and the HP turbine disc life is greater than 700 cycles since new. If a HP turbine disc that meets these cyclic life criteria is currently at shop visit, and if, at the effective date of this Airworthiness Directive, it has not yet been reinstalled into the Combustion Outer Case, then the HP turbine disc must be inspected in accordance with the requirements of this Airworthiness Directive at the current shop visit.

(B) For all RB211–524D4 engine mark variants:

(*1*) If the HP turbine disc cycles are greater than 5000 cycles since new on the effective date of this AD, inspect the HP turbine disc within 500 cycles after the effective date of this AD.

(*2*) If the HP turbine disc cycles were less than 5000 cycles since new on the effective date of this AD, inspect the HP turbine disc by whichever is the soonest of the conditions below:

(*i*) Prior to reaching 5500 cycles since new. The HP turbine disc life at inspection must be greater than 700 cycles since new.

(*ii*) At the next shop visit where the HP turbine rotor is removed from the Combustor Outer Case and the HP turbine disc life is greater than 700 cycles since new. If a HP turbine disc that meets these cyclic life criteria is currently at shop visit, and if, at the effective date of this Airworthiness Directive, it has not yet been reinstalled into the Combustion Outer Case, then the HP turbine disc must be inspected in accordance with the requirements of this Airworthiness Directive at the current shop visit.

(ii) For all other HP turbine discs specified in the Applicability of this Directive but not listed in Table 1 of this AD.

(A) Inspect the HP turbine disc at next shop visit where the HP turbine rotor is removed from the Combustor Outer Case and the HP turbine disc life is greater than 700 cycles since new. If a HP turbine disc that meets these cyclic life criteria is currently at shop visit, and if, at the effective date of this Airworthiness Directive, it has not yet been reinstalled into the Combustion Outer Case, then the HP turbine disc must be inspected in accordance with the requirements of this Airworthiness Directive at the current shop visit.

(B) If a HP turbine disc has previously passed the inspection to Rolls-Royce NMSB 72–C816 or the focused inspection carried out in accordance with Rolls-Royce TS594–J Overhaul Process Manual Task 70–00–00–200–223 at greater than 700 cycles since new, then either of these inspections meets the requirements of this Airworthiness Directive.

FAA AD Differences

(f) Wherever the MCAI AD specifies 24 November 2005, this AD specifies the effective date of this AD.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to the Civil Aviation Authority Airworthiness Directive G–2006–0002, dated February 13, 2006, for related information.

(i) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce Service Bulletin RB.211–72–AE718, dated January 24, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011 44 1332–242424; fax: 011 44 1332–249936.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on July 31, 2008.

Peter A. White,

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

[FR Doc. E8–18102 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0308; Airspace Docket No. 08–AEA–19]

Modification of Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E Airspace at Rome, New York to support the amendment of the current Terminal Visual Flight Rule (VFR) Radar Service Area (TRSA) and to allow for a lower vectoring altitude known as the Minimum Vectoring Altitude (MVA) for vectoring of both VFR and Instrument Flight Rule (IFR) aircraft around the Rome, NY area. This action will enhance the safety and airspace management around the Griffiss Airport area.

DATES: *Effective Date:* 0901 UTC, November 20, 2008.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

History

On January 1, 2007, the Oneida County Airport, Utica, NY was permanently closed and operations moved to the Griffiss Airfield. The local area Terminal VFR Radar Service Area (TRSA) is being revised and there is a requirement for the base of the TRSA to not be below the associated Class E airspace. A careful analysis of operations determined a need for additional Class E airspace extending upward from 700 feet above the surface of the Earth to enhance the management, safety and efficiency of air traffic services in the area. This modification would satisfy that requirement.

On May 8, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish additional Class E airspace at Griffiss Airfield (73 FR 26047). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments objecting to the proposal were received, and the rule is being promulgated as proposed.

Designations for Class E Airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Rome, NY. To provide for a lower MVA in the Rome, NY, area for VFR and IFR operations, it establishes Class E airspace upward from 700 feet above the surface of the Earth within a 15-mile radius of Griffiss Airfield and within a 26-mile radius of the airport to the southeast and south of the airport.

The FAA has determined that this final rule 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment:

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

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

■ 1. The authority citation for part 71 will continue 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, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA NY E5 Rome, NY [REVISED]

Griffiss Airfield, NY
(Lat. 43°14′02″ N., long. 75°24′25″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 15-mile radius of Griffiss Airfield and within a 26-mile radius of the airport extending clockwise from a 125° bearing to a 200° bearing from the airport.

* * * * *

Issued in College Park, Georgia, on July 14, 2008.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–18135 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 70

[Docket Number 080703821–8824–01]

RIN 0607–AA47

Cutoff Dates for Recognition of Boundary Changes for the 2010 Census

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Final Rule.

SUMMARY: The Bureau of the Census (Census Bureau) is amending its regulations to establish cutoff dates for the recognition of boundary changes for the 2010 Census. This amendment is necessary, as the existing cutoff dates are out of date. Upon effectiveness of this rule, the Census Bureau will recognize only those boundaries legally in effect on January 1, 2010, that have been reported officially to the Census Bureau no later than March 1, 2010.

DATES: This rule is effective on August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Daniel H. Weinberg, Acting Chief, Geography Division, U.S. Census Bureau, Washington, DC 20233–7400, telephone (301) 763–2131, or e-mail *geo.bas@census.gov*.

SUPPLEMENTARY INFORMATION: The Census Bureau is amending 15 CFR part 70 to establish cutoff dates for recognition of boundary changes made through the Boundary and Annexation Survey (BAS) for the 2010 Census, the American Community Survey (ACS), and the Population Estimates Program. The cutoff dates were last established for Census 2000 on March 3, 1998 (63 FR 10303). Those cutoff dates are out of date; therefore, the Census Bureau amends its regulations to update the cutoff dates for the 2010 Census. For the 2010 Census, the Census Bureau will recognize only those boundaries legally in effect on January 1, 2010, that have been reported officially to the Census Bureau no later than March 1, 2010. To implement this change, the Census Bureau changes the name of the census from ''Census 2000'' to ''2010 Census'' and the reference year from 2000 to 2010 throughout its regulations.

The reporting deadline for the BAS is usually April 1 of each year. However, to ensure the timely and official reporting of legal boundary changes for the 2010 Census, and subsequent data dissemination and tabulation activities, we establish the above-referenced deadlines. The BAS 2009 reporting deadline will be March 1, 2009, and the BAS 2010 reporting deadline will be March 1, 2010.

In addition, the Census Bureau amends § 70.2 to remove and update the reference publication that provides information on the definition of ''municipality'' and ''county subdivision.'' The reference to the 1990 Census of Population, Volume 1, General Population Characteristics, 1990 CP–1–1, Appendix A, is replaced with a reference to the Census 2000 Geographic Terms and Concepts, Appendix A.

Rulemaking Requirements

Administrative Procedure Act

The Census Bureau finds good cause under 5 U.S.C. 553(b)(B) to waive notice and comment requirements of the Administrative Procedure Act because it is unnecessary and contrary to the public interest. This amendment is necessary to establish the cutoff date for recognition of boundary changes for the 2010 Census and to update an obsolete citation to a reference publication. Upon implementation of this final rule for the 2010 Census, the Census Bureau will recognize only those boundaries legally in effect on January 1, 2010, that have been reported officially to the Census Bureau no later than March 1, 2010. This change does not impact the rights or obligations of any entity. This change merely establishes the last date on which the Census Bureau will accept changes to the legal boundaries used by the Census Bureau to conduct the data tabulation for the decennial census. In addition, this rule updates the reference that provides information on the definition of ''municipality'' and ''county subdivision.''

The Census Bureau finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness. As stated above, this amendment is necessary to establish the cutoff date for recognition of boundary changes for the decennial census and to update an obsolete citation to a reference publication. This change does not impact the rights or obligations of any entity. This change merely establishes the last date on which the Census Bureau will accept changes to the legal boundaries used by the Census Bureau to conduct the data tabulation for the decennial census, and to update a reference publication that provides information on the definition of ''municipality'' and ''county subdivision.'' Therefore, the Census Bureau makes this final rule effective immediately upon publication.

Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for comment are not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This final rule does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 15 CFR Part 70

Administrative practice and procedure, Census data, Population census, Statistics.

■ For the reasons stated in the preamble, the Census Bureau is amending 15 CFR Part 70 as follows:

PART 70—[AMENDED]

■ 1. The authority for Part 70 continues to read as follows:

Authority: 13 U.S.C. 4 and Department of Commerce Organization Order 35–2A (40 FR 42765).

■ 2. In 15 CFR Part 70, remove the words ''Census 2000'' wherever they appear and add, in their place, the words ''2010 Census.''

■ 3. In 15 CFR part 70, remove the date ''2000'' wherever it appears and add, in its place, the date ''2010.''

§ 70.2 [Amended]

4. In § 70.2 remove the sentence ''A more complete description appears on pages A–6 and A–11 of 1990 Census of Population, Volume 1, General Population Characteristics, 1990 CP–1–1, Appendix A,'' and add, in its place, the sentence ''A more complete description appears on pages A–12 and A–13 of Appendix A, Census 2000 Geographic Terms and Concepts.''

Dated: August 5, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–18305 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service

AGENCY: Federal Transit Administration, DOT.

ACTION: Correcting amendments.

SUMMARY: The Federal Transit Administration published a document in the **Federal Register** on August 1, 2008, revising the appendices to the final rule and responding to petitions for reconsideration. That document inadvertently failed to update the table in Appendix D, which should have appeared in the rule as a matrix.

DATES: *Effective Date:* August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Crystal Frederick, Ombudsman for Charter Services, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54–410, Washington, DC 20590, (202) 366–4063 or *ombudsman.charterservice@dot.gov*.

SUPPLEMENTARY INFORMATION: This is a second correction to the final rule published on January 14, 2008 (73 FR 2326). The first correction was published in the **Federal Register** on August 1, 2008 (73 FR 44927).

List of Subjects in 49 CFR Part 604

Charter Service.

■ Accordingly, 49 CFR part 604 is corrected by making the following correcting amendment:

■ 1. The authority citation for part 604 continues to read as follows:

Authority: 49 U.S.C. 5323(d); § 3023(d), Public Law 109–59; 49 CFR 1.51.

■ 2. Revise the table in appendix D to part 604 to read as follows:

Appendix D to Part 604—Table of Potential Remedies

Remedy Assessment Matrix:

Extent of Deviation from Regulatory Requirements

Economic Benefit	Major	Moderate	Minor
Major	$25,000/violation to 20,000	$19,999/violation to 15,000	$14,999/violation to 11,000
Moderate	$10,999/violation to 8,000	$7,999/violation to 5,000	$4,999/violation to 3,000
Minor	$2,999/violation to 1,500	1,499/violation to 500	$499/violation to 100

* * * * *

Issued this 5th day of August 2008.

Severn E.S. Miller,

Chief Counsel.

[FR Doc. E8–18444 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–57–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061020273 6321 02]

RIN 0648–XJ34

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2008 Winter II Quota

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2008 Winter II commercial scup quota. This action complies with Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

DATES: Effective August 11, 2008, through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period (January 1 through April 30) to be added to the quota for the Winter II period (November 1 through December 31), and to allow adjustment of the commercial possession limits for the Winter II period commensurate with the amount of quota rolled over from the Winter I period.

For 2008, the initial Winter II quota is 844,036 (383 mt), and the best available landings information indicates that 96,912 lb (44 mt) remain of the Winter I quota of 2,388,611 lb (1,083 mt). Consistent with the intent of Framework 3, the full amount of unused 2008 Winter I quota is transferred to Winter II, resulting in a revised 2008 Winter II quota of 940,948 lb (427 mt). Because the amount transferred is less than 499,999 lb (227 mt), the possession limit per trip will remain 2,000 lb (907 kg) during the Winter II quota period, consistent with the final rule Winter I to Winter II possession limit increase table (table 5) published in the 2008 final scup specifications (72 FR 74200, December 31, 2007).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 4, 2008.

James P. Burgess,

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

[FR Doc. E8–18409 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080428611–8612–01]

RIN 0648–XJ22

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #5 and #6

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NOAA Fisheries announces two inseason actions in the ocean salmon fisheries. Inseason action #5 modified the commercial fishery from the U.S./Canada Border to Cape Falcon, Oregon. Inseason action #6 modified the recreational fishery from U.S./Canada Border to Cape Falcon, Oregon.

DATES: Inseason action #5 was effective on June 21, 2008, in the area from the U.S./Canada Border to Cape Falcon, Oregon, as it adjusted the landing and possession limit, and effective on June 24, 2008, for the closure of the area. After this time, the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period as announced in the 2008 annual management measures. Inseason action #6 was effective June 21, 2008, in the areas from the U.S./Canada border to Cape Alava, WA (Neah Bay subarea), from Cape Alava to Queets River, WA (La Push Subarea) and from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea), effective June 22, 2008, in the area from Queets River to Leadbetter Point, WA (Westport subarea), effective July 1, 2008, in the Neah Bay and La Push subarea, and effective June 29, 2008, in the Westport and Columbia River subareas. These adjustments will remain in effect until the closing date or attainment of the subarea quotas, whichever is first, as announced in the 2008 annual management measures or through additional inseason action. Comments will be accepted through August 26, 2008.

ADDRESSES: You may submit comments, identified by 0648–XJ22, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736, Attn: Sarah McAvinchey
- Mail: 7600 Sand Point Way NE, Build 1, Seattle, WA, 98115

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2008 annual management measures for ocean salmon fisheries (73 FR 23971, May 1, 2008), NMFS announced the commercial and recreational fisheries in the area from Cape Falcon, Oregon, to the U.S./Mexico Border.

On June 19, 2008, for Inseason #5 and June 20, 2008, for inseason #6, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. Information related to catch to date and Chinook and coho catch rates. Inseason action #5 was taken because the quota in the area from the U.S./Canada Border to Cape Falcon, Oregon, was projected to be met and in order to provide more fishing days within the remaining quota and open days the landing and possession limit was decreased and the fishery was closed before the scheduled close date as listed in the 2008 management measures (73 FR 23971, May 1, 2008). Inseason action #6 was taken because catch data indicated there was quota available in the area from the U.S./Canada Border to Cape Falcon, Oregon, to be taken within the scheduled season, therefore removing the restriction on the number of Chinook to be landed attempted to provide the opportunity for the full quota to be taken within the scheduled season.

As a result, on June 19, 2008, the states recommended, and the RA concurred that inseason action #5 would take effect in the area from the U.S./Canada border to Cape Falcon, Oregon. Effective June 21, 2008 the landing and possession limit in this area would be 35 Chinook per vessel for each open period north of Leadbetter Point or 35 Chinook south of Leadbetter Point. Following this opening the area from the U.S./Canada border to Cape Falcon, Oregon, was closed at 11:59 pm on Tuesday, June 24, 2008. On June 20, 2008, the states recommended, and the RA concurred that inseason action #6 would take effect in the area from the U.S./Canada border to Cape Falcon, Oregon. Inseason action #6 increased the landing and possession limit to 2 fish per day for Chinook only, effective Saturday, June 21, 2008 in the areas from the U.S./Canada border to Cape Alava, WA (Neah Bay subarea), from Cape Alava to Queets River, WA (La Push Subarea) and from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea). This action also increased the landing and possession limit to 2 fish per day for Chinook only, effective Sunday, June 22, 2008, in the area from Queets River to Leadbetter Point, WA (Westport subarea). In addition to these adjustments the following change was made, effective July 1, 2008, in the Neah Bay and La Push subarea, and effective June 29, 2008, in the Westport and Columbia River subareas, the landing and possession limit was modified to all salmon 2 fish per day with no restriction to land no more than 1 Chinook. Modification of quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i), modification of recreational bag limits is authorized at 50 CFR 660.409(b)(1)(iii).

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given,

prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (73 FR 23971, May 1, 2008), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: August 5, 2008.

James P. Burgess,

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

[FR Doc. E8–18482 Filed 8–8–08; 8:45 am]

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Proposed Rules

Federal Register
Vol. 73, No. 155
Monday, August 11, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI01

[NRC–2007–0008]

Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering the adoption of provisions regarding applicability of the rule and new provisions regarding procedures to perform surveillance data checks related to the updated fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized water reactor (PWR) pressure vessels. The NRC is considering these provisions as an alternative to the provisions previously noticed for public comment on October 3, 2007 (72 FR 56275).

DATES: Submit comments on this proposed rule by September 10, 2008. Submit comments on the information collection aspects on this proposed rule by September 10, 2008.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AI01 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Federal e Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2007–0008. Address questions about NRC dockets to Carol Gallagher (301) 415–5905; e-mail *Carol.Gallager@nrc.gov*.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine publicly available documents at the NRC's PDR, Public File Area O–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into 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's PDR reference staff at 1–800–397–4209, or (301) 415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica M. Rodriguez, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3703; e-mail: *Veronica.Rodriguez@nrc.gov*, Mr. Barry Elliot, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2709; e-mail: *Barry.Elliot@nrc.gov*, or Mr. Mark Kirk, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6015; e-mail: *Mark.Kirk@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Discussion
IV. Responses to Comments on the Proposed Rule
V. Section-by-Section Analysis
VI. Specific Request for Comments
VII. Availability of Documents
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X. Finding of No Significant Environmental Impact: Availability
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I. Introduction

The NRC published a proposed rule on alternate fracture toughness requirements for protection against Pressurized Thermal Shock (PTS) for public comments in the **Federal Register** on October 3, 2007 (72 FR 56275). This rule provides new PTS requirements based on updated analysis methods. This action is desirable because the existing requirements are based on unnecessarily conservative probabilistic fracture mechanics analyses. This action would reduce regulatory burden for licensees, specifically those licensees that expect to exceed the existing requirements before the expiration of their licenses, while maintaining adequate safety. These new requirements would be utilized by any Pressurized Water Reactor (PWR) licensee as an alternative to complying with the existing requirements.

During the development of the PTS final rule, the NRC determined that several changes to the proposed rule language may be needed to adequately address issues raised in stakeholder's comments. The NRC also determined, in response to a stakeholder comment, that the characteristics of advanced PWR designs were not considered in the technical analysis made for the proposed rule. The NRC does not have assurance that reactors that commence commercial power operation after the effective date of this rule will have operating characteristics and materials of fabrication similar to those evaluated as part of the technical basis for the proposed rule. Therefore, the NRC has concluded that it would be prudent to

limit the applicability and the use of § 50.61a to currently-operating plants only, and proposes to modify the applicability provisions of the proposed rule accordingly.

Also, several stakeholders questioned the accuracy and validity of the generic embrittlement curves in the proposed rule. The NRC wants to ensure that the predicted values from the proposed embrittlement trend curves provide an adequate basis for implementation of the rule. Therefore, the NRC has continued to work on statistical procedures to identify deviations from generic embrittlement trends, such as those described in § 50.61a(f)(6) of the proposed rule. Based on this work, the NRC is considering enhancing the procedure described in paragraph § 50.61a(f)(6) to, among other things, detect signs from the plant- and heat-specific surveillance data of embrittlement trends that are not reflected by Equations 5, 6 and 7 of the rule that may emerge at high fluences.

Because these proposed modifications may not represent a logical outgrowth from the October 2007 proposed rule's provisions, the NRC concludes that obtaining stakeholder feedback on the proposed alternative provisions through the use of a supplemental proposed rule is appropriate. As discussed in Section VI of this notice, the NRC will consider comments on §§ 50.61a(b); (f)(6)(i) through (f)(6)(vi); Equations 10, 11, and 12 in § 50.61a(g); and Tables 5, 6, and 7 of this supplemental proposed rule. The NRC is also requesting comments on whether there should be additional language added to § 50.61a(e) to allow licensees to account for the effects of sizing errors. This supplemental proposed rule does not reflect other modifications or editorial and conforming changes that the NRC is considering to incorporate in the final rule as a result of the public comments on the October 2007 proposed rule.

II. Background

PTS events are system transients in a PWR in which severe overcooling occurs coincident with high pressure. The thermal stresses are caused by rapid cooling of the reactor vessel inside surface, which combine with the stresses caused by high pressure. The aggregate effect of these stresses is an increase in the potential for fracture if a pre-existing flaw is present in a material susceptible to brittle failure. The ferritic, low alloy steel of the reactor vessel beltline adjacent to the core, where neutron radiation gradually embrittles the material over the lifetime of the plant, can be susceptible to brittle fracture.

The PTS rule, described in § 50.61, adopted on July 23, 1985 (50 FR 29937), establishes screening criteria below which the potential for a reactor vessel to fail due to a PTS event is deemed to be acceptably low. The screening criteria effectively define a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation. Regulatory Guide (RG) 1.154, ''Format and Content of Plant-Specific Pressurized Thermal Shock Analysis Reports for Pressurized Water Reactors,'' indicates that reactor vessels that exceed the screening criteria in § 50.61 may continue to operate provided they can demonstrate a mean through-wall crack frequency (TWCF) from PTS-related events of no greater than 5×10^{-6} per reactor year.

Any reactor vessel with materials predicted to exceed the screening criteria in § 50.61 may not continue to operate without implementation of compensatory actions or additional plant-specific analyses unless the licensee receives an exemption from the requirements of the rule. Acceptable compensatory actions are neutron flux reduction, plant modifications to reduce PTS event probability or severity, and reactor vessel annealing, which are addressed in §§ 50.61(b)(3), (b)(4), and (b)(7); and § 50.66, ''Requirements for Thermal Annealing of the Reactor Pressure Vessel.''

Currently, no operating PWR reactor vessel is projected to exceed the § 50.61 screening criteria before the expiration of its 40 year operating license. However, several PWR reactor vessels are approaching the screening criteria, while others are likely to exceed the screening criteria during their first license renewal periods.

The NRC's Office of Nuclear Regulatory Research (RES) developed a technical basis that supports updating the PTS regulations. This technical basis concluded that the risk of through-wall cracking due to a PTS event is much lower than previously estimated. This finding indicated that the screening criteria in § 50.61 are unnecessarily conservative and may impose an unnecessary burden on some licensees. Therefore, the NRC created a new rule, § 50.61a, which provides alternate screening criteria and corresponding embrittlement correlations based on the updated technical basis. The NRC decided that providing a new section containing the updated screening criteria and updated embrittlement correlations would be appropriate because the Commission directed the NRC staff, in a Staff Requirements Memorandum (SRM) dated June 30, 2006, to prepare a rulemaking which would allow current PWR licensees to implement the new requirements of § 50.61a or continue to comply with the current requirements of § 50.61. Alternatively, the NRC could have revised § 50.61 to include the new requirements, which could be implemented as an alternative to the current requirements. However, providing two sets of requirements within the same regulatory section was considered confusing and/or ambiguous as to which requirements apply to which licensees.

The NRC published the proposed rulemaking on the alternate fracture toughness requirements for protection against PTS for public comment in the **Federal Register** on October 3, 2007 (72 FR 56275). The proposed rule provided an alternative to the current rule, which a licensee may choose to adopt. This prompted the NRC to keep the current requirements separate from the new alternative requirements. As a result, the proposed rule retained the current requirements in § 50.61 for PWR licensees choosing not to implement the less restrictive screening limits, and presented new requirements in § 50.61a as an alternative relaxation for PWR licensees.

III. Discussion

The NRC published a proposed new rule, § 50.61a (October 3, 2007, 72 FR 56275), that would provide new PTS requirements based on updated analysis methods because the existing requirements are based on unnecessarily conservative probabilistic fracture mechanics analyses. Stakeholders' comments raised concerns related to the applicability of the rule and the accuracy and validity of the generic embrittlement curves. The NRC reconsidered the technical and regulatory issues in these areas and is considering adopting the modified provisions regarding the applicability of the rule and new provisions regarding procedures to perform surveillance data checks described in this supplemental proposed rule. The NRC will consider comments on §§ 50.61a(b), (f)(6)(i) through (f)(6)(vi); Equations 10, 11 and 12 in § 50.61a(g); and Tables 5, 6, and 7 of this supplemental proposed rule. As described in Section VI of this notice, the NRC is also requesting comments on whether there should be additional language added to § 50.61a(e) to allow licensees to account for the effects of sizing errors. The NRC will consider the October 2007 proposed rule, the supplemental proposed rule, and the comments received in response

to both, when deciding whether to adopt a final PTS rule.

Applicability of the Proposed Rule, § 50.61a(b)

The supplemental proposed rule differs from the proposed rule and from § 50.61 in that it proposes to limit the use of § 50.61a to currently operating plants only. It cannot be demonstrated, *a priori*, that reactors which commence commercial power operation after the effective date of this rule will have operating characteristics, in particular identified PTS event sequences and thermal-hydraulic responses, which are consistent with the reactors which were evaluated as part of the technical basis for this rule. Other factors, including materials of fabrication and welding methods, could also vary. Hence, the use of § 50.61a would be limited to currently operating PWR facilities which are known to have characteristics consistent with those assumed in the technical basis. The NRC also proposes to allow the holder of the operating license for Watts Bar Unit 2 to adopt the requirements in § 50.61a as this facility has operating characteristics consistent with those assumed in the technical basis. The NRC recognizes that licensees for reactors who commence commercial power operation after the effective date of this rule may, under the provisions of § 50.12, seek an exemption from § 50.61a(b) to apply this rule if a plant-specific basis analyzing their operating characteristics, materials of fabrications, and welding methods is provided.

Surveillance Data, § 50.61a(f)

Section 50.61a(f) of the proposed rule defines the process for calculating the values for the material properties (*i.e.* , RT_{MAX-X}) for a particular reactor vessel. These values would be based on the vessel material's copper, manganese, phosphorus, and nickel weight percentages, reactor cold leg temperature, and fast neutron flux and fluence values, as well as the unirradiated nil-ductility transition reference temperature (*i.e.*, RT_{NDT}).

Section 50.61a(f) of the proposed rule included a procedure by which the RT_{MAX-X} values, which are predicted for plant-specific materials using a generic temperature shift (*i.e.*, ΔT_{30}) embrittlement trend curve, are compared with heat-specific surveillance data that are collected as part of 10 CFR Part 50, Appendix H surveillance programs. The purpose of this comparison is to assess how well the surveillance data are represented by the generic embrittlement trend curve. If the surveillance data are close (closeness is assessed statistically) to the generic embrittlement trend curve, then the predictions of this embrittlement trend curve are used. This is expected to normally be the case. However, if the heat-specific surveillance data deviate significantly, and non-conservatively, from the predictions of the generic embrittlement trend curve, this indicates that alternative methods (*i.e.*, other than, or in addition to, the generic embrittlement trend curve) may be needed to reliably predict the temperature shift trends, and to estimate RT_{MAX-X}, for the conditions being assessed. However, alternative methods for temperature shift prediction are not prescribed by § 50.61a(f) of the proposed rule.

Although standard and accepted procedures exist to assess the statistical significance of the differences between heat-specific surveillance data and the generic embrittlement trend curve, similarly standard and acceptable procedures are not available to assess the practical importance of such differences. The practical importance of statistically significant deviations is best assessed by licensees on a case-by-case basis, which would be submitted for the review of the Director of NRR, as prescribed by § 50.61a(f).

The method described in the proposed rulemaking to compare the heat-specific surveillance data collected as part of 10 CFR part 50, Appendix H surveillance programs to the generic temperature shift embrittlement trend curve included a single statistical test. This statistical test was set forth by Equations 9 and 10, and Table 5. This test determined if, on average, the temperature shift from the surveillance data was significantly higher than the temperature shift of the generic embrittlement trend curve. The NRC has determined that, while necessary, this single test is not sufficient to ensure that the temperature shift predicted by the embrittlement trend curve well represents the heat-specific surveillance data. Specifically, this single statistical test cannot determine if the temperature shift from the surveillance data shows a more rapid increase after significant radiation exposure than the progression predicted by the generic embrittlement trend curve. To address this potential deficiency, which could be particularly important during a plant's period of extended operation, the NRC added two more statistical tests in this supplemental proposed rulemaking, which are expressed by Equations 11 and 12 and by Tables 6 and 7. Together, these two additional tests determine if the surveillance data from a particular heat show a more rapid increase after significant radiation exposure than the progression predicted by the generic embrittlement trend curve.

The NRC documented the technical basis for the proposed alternative in the following reports: (1) ''Statistical Procedures for Assessing Surveillance Data for 10 CFR Part 50.61a,'' (ADAMS Accession No. ML081290654), and (2) ''A Physically Based Correlation of Irradiation Induced Transition Temperature Shifts for RPV Steel,'' (ADAMS Accession No. ML081000630).

IV. Responses to Comments on the Proposed Rule

The NRC received 5 comment letters on the proposed 10 CFR 50.61a rule published on October 3, 2007 (72 FR 56275). The following paragraphs discuss those comments which are directly associated with the supplemental proposed rule's provisions on the applicability of the rule and surveillance data procedures. The remainder of the comments and the NRC responses will be provided in the **Federal Register** notice for the final rule.

Comments on the Applicability of the Proposed Rule

Comment: The commenters stated that the rule, as written, is only applicable to the existing fleet of PWRs. The characteristics of advanced PWR designs were not considered in the analysis. The commenters suggested adding a statement to state that this rule is applicable to the current PWR fleet and not the new plant designs. [PWROG–5, EPRI–5]

Response: The NRC agrees with the comment that this rule is only applicable to the existing fleet of PWRs. The NRC cannot be assured that reactors that commence commercial power operation after the effective date of this rule will have operating characteristics, in particular identified PTS event sequences and thermal-hydraulic responses, which are consistent with the reactors that were evaluated as part of the technical basis for § 50.61a. Other factors, including materials of fabrication and welding methods, could also vary. Therefore, the NRC agrees with the commenters that it would be prudent to restrict the use of § 50.61a to current plants. As a result of this comment, the NRC proposes to modify § 50.61a(b) and the statement of considerations of the rule to reflect this position to limit the use of the rule to currently operating plants.

Comments on Surveillance Data

Comment: The commenters stated that there is little added value in the requirement to assess the surveillance

data as a part of this rule because variability in data has already been accounted for in the derivation of the embrittlement correlation.

The commenters also stated that there is no viable methodology for adjusting the projected ΔT_{30} for the vessel based on the surveillance data. Any effort to make this adjustment is likely to introduce additional error into the prediction. Note that the embrittlement correlation described in the basis for the revised PTS rule (*i.e.*, NUREG–1874) was derived using all of the currently available industry-wide surveillance data.

In the event that the surveillance data does not match the ΔT_{30} value predicted by the embrittlement correlation, the best estimate value for the pressure vessel material is derived using the embrittlement correlation. The likely source of the discrepancy is an error in the characterization of the surveillance material or of the irradiation environment. Therefore, unless the discrepancy can be resolved, obtaining the ΔT_{30} prediction based on the best estimate chemical composition for the heat of the material is more reliable than a prediction based on a single set of surveillance measurements.

The commenters suggested removing the requirement to assess surveillance data, including Table 5, of this rule. [PWROG–4, EPRI–4, NEI–2]

Response: The NRC does not agree with the proposed change. The NRC believes that there is added value in the requirement to assess surveillance data. Although variability has been accounted for in the derivation of the embrittlement correlation, it is the NRC's view that the surveillance assessment required in § 50.61a(f)(6) is needed to determine if the embrittlement for a specific heat of material in a reactor vessel is consistent with the embrittlement predicted by the embrittlement correlation.

The commenters also assert that there is no viable methodology for adjusting the projected ΔT_{30} for the vessel based on the surveillance data, and that any adjustment is likely to introduce additional error into the prediction. The NRC believes that although there is no single methodology for adjusting the projected ΔT_{30} for the vessel based on the surveillance data, it is possible, on a case-specific basis, to justify adjustments to the generic ΔT_{30} prediction. For this reason the rule does not specify a method for adjusting the ΔT_{30} value based on surveillance data, but rather requires the licensee to propose a case-specific ΔT_{30} adjustment procedure for review and approval from the Director. Although the commenters assert that it is possible that error could be introduced, it is the NRC view that appropriate plant-specific adjustments based upon available surveillance data may be necessary to project reactor pressure vessel embrittlement for the purpose of this rule.

As the result of these public comments, the NRC has continued to work on statistical procedures to identify deviations from generic embrittlement trends, such as those described in § 50.61a(f)(6) of the proposed rule. Based on this work, the NRC is considering further enhancing the procedure described in paragraph (f)(6) to, among other things, detect signs from the plant- and heat-specific surveillance data that may emerge at high fluences of embrittlement trends that are not reflected by Equations 5, 6, and 7. The empirical basis for the NRC's concern regarding the potential for un-modeled high fluence effects is described in documents located at ADAMS Accession Nos. ML081120253, ML081120289, ML081120365, ML081120380, and ML081120600. The technical basis for the enhanced surveillance assessment procedure is described in the document located at ADAMS Accession No. ML081290654.

V. Section-by-Section Analysis

The following section-by-section analysis only discusses the modifications in the provisions related to the applicability of the rule and surveillance data procedures that the NRC is considering as an alternative in this supplemental proposed rule. The NRC is only seeking comments on these alternative provisions. This supplemental proposed rule does not reflect other modifications or editorial and conforming changes that the NRC is considering to incorporate as a result of the public comments on the proposed rule that were not discussed in this notice as they will be provided in the **Federal Register** notice for the final rule.

Proposed § 50.61a(b)

The proposed language for § 50.61a(b) would establish the applicability of the rule. The NRC proposes to modify this paragraph to limit the use of this rule to currently-operating plants only.

Proposed § 50.61a(f)(6)(i)

The proposed language for § 50.61a(f)(6)(i) would establish the requirements to perform data checks to determine if the surveillance data show a significantly different trend than what the embrittlement model in this rule predicts. The NRC proposes to modify § 50.61a(f)(6)(i)(B) to state that licensees would evaluate the surveillance for consistency with the embrittlement model by following the procedures specified by §§ 50.61a(f)(6)(ii), (f)(6)(iii), and (f)(6)(iv) of the supplemental proposed rule.

Proposed § 50.61a(f)(6)(ii)

The proposed language for § 50.61a(f)(6)(ii) would establish the requirements to perform an estimate of the mean deviation of the data set from the embrittlement model. The mean deviation for the data set would be compared to values given in Table 5 or Equation 10 of this section. The NRC proposes to modify this paragraph to state that the surveillance data analysis would follow the criteria in §§ 50.61a(f)(6)(v) and (f)(6)(vi) of the supplemental proposed rule.

Proposed § 50.61a(f)(6)(iii)

The NRC proposes to modify § 50.61a(f)(6)(iii) to establish the requirements to estimate the slope of the embrittlement model residuals (i.e., the difference between the measured and predicted value for a specific data point). The licensee would estimate the slope using Equation 11 and compare this value to the maximum permissible value in Table 6, both from the supplemental proposed rule. This surveillance data analysis would follow the criteria in §§ 50.61a(f)(6)(v) and (f)(6)(vi) of the supplemental proposed rule.

Proposed § 50.61a(f)(6)(iv)

The NRC proposes to modify § 50.61a(f)(6)(iv) to establish the requirements to estimate an outlier deviation from the embrittlement model for the specific data set using Equations 8 and 12. The licensee would compare the normalized residuals to the allowable values in Table 7 of the supplemental proposed rule. This surveillance data analysis would follow the criteria in §§ 50.61a(f)(6)(v) and (f)(6)(vi) of the supplemental proposed rule.

Proposed § 50.61a(f)(6)(v)

The NRC proposes to add paragraph (f)(6)(v) to establish the criteria to be satisfied in order to calculate the ΔT_{30} shift values.

Proposed § 50.61a(f)(6)(vi)

The NRC proposes to add paragraph (f)(6)(vi) to establish the actions to be taken by a licensee if the criteria in paragraph (f)(6)(v) of this section are not met. The licensee would need to submit an evaluation of the surveillance data and propose values for ΔT_{30}, considering their plant-specific

surveillance data, for the review and approval by the Director. The licensee would need to submit an evaluation of each surveillance capsule removed from the vessel after the submittal of the initial application for review and approval by the Director no later than 2 years after the capsule is withdrawn from the vessel.

Proposed § 50.61a(g)

The proposed language for § 50.61a(g) would provide the necessary equations and variables required by the proposed changes in § 50.61a(f)(6). The NRC proposes to modify Equation 10 to account for 1 percent of significance level. Equations 11 and 12 would be added to provide the means for estimating the slope and the outlier deviation from the embrittlement model.

Proposed Tables 5, 6, and 7

Tables 5, 6, and 7 would provide values to be used in the proposed changes in § 50.61a(f)(6). The NRC proposes to modify Table 5 to account for the use of a 1 percent of significance level. Tables 6 and 7 would be added to provide the threshold values for the slope and the outlier deviation tests.

VI. Specific Request for Comments

The NRC seeks comments on §§ 50.61a(b), (f)(6)(i) through (f)(6)(vi); Equations 10, 11, and 12 in § 50.61a(g), and Tables 5, 6, and 7 of the supplemental proposed rule. The NRC is not seeking comments on any other provisions of the proposed § 50.61a which remain unchanged from the October 2007 proposed rule. In addition, the NRC also requests comments on the following question:

Adjustments of the Inservice Inspection Volumetric Examination and Flaw Assessments

The flaw sizes in Tables 2 and 3 are selected so that reactor vessels with flaw sizes less than or equal to those in the tables will have a TWCF less than or equal to 1×10^{-6} per reactor year at the maximum permissible embrittlement. The NRC recognizes that the flaw sizes in these tables represent actual flaw dimensions while the results from the ASME Code examinations are estimated dimensions. The available information indicates that, for most flaw sizes in Tables 2 and 3, qualified inspectors will oversize flaws. Comparing oversized flaws to the size and density distributions in Tables 2 and 3 is conservative and acceptable, but not necessary. Therefore, NRC is considering to permit flaw sizes to be adjusted to account for the effects of sizing error before comparing the estimated size and density distribution to the acceptable size and density distributions in Tables 2 and 3. This would be accomplished by requiring licensees to base the methodology to account for the effects of sizing error on statistical data collected from ASME Code inspector qualification tests. An acceptable method would include a demonstration, that accounting for the effects of sizing error, is unlikely to result in accepting actual flaw size distribution that cause the TWCF to exceed the acceptance criteria. Adjusting flaw sizes to account for sizing error can change an unacceptable examination result into an acceptable result; further, collecting, evaluating, and using data from ASME Code inspector qualification tests will require extensive engineering judgment. Therefore, the methodology would have to be reviewed and approved by the Director of the NRC's Office of Nuclear Reactor Regulation (NRR) to ensure that the risk associated with PTS is acceptable. The NRC requests specific comments on whether there should be additional language added to 10 CFR 50.61a(e) to allow licensees to account for the effects of sizing errors.

VII. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland 20852.

Regulations.gov (Web). These documents may be viewed and downloaded electronically through the Federal eRulemaking Portal *http://www.regulations.gov*, Docket number NRC–2007–0008.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html*.

Document	PDR	Web	ERR (ADAMS)
Federal Register Notice—Proposed Rule: Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (RIN 3150–AI01), 72 FR 56275, October 3, 2007	X	NRC–2007–0008	ML072750659
Letter from Thomas P. Harrall, Jr., dated December 17, 2007, ''Comments on Proposed Rule 10 CFR 50, Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, RIN 3150–AI01'' [Identified as Duke]	X	NRC–2007–0008	ML073521542
Letter from Jack Spanner, dated December 17, 2007, ''10 CFR 50.55a Proposed Rulemaking Comments RIN 3150–AI01'' [Identified as EPRI]	X	NRC–2007–0008	ML073521545
Letter from James H. Riley, dated December 17, 2007, ''Proposed Rulemaking—Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (RIN 3150–AI01), 72 FR 56275, October 3, 2007 [Identified as NEI]	X	NRC–2007–0008	ML073521543
Letter from Melvin L. Arey, dated December 17, 2007, ''Transmittal of PWROG Comments on the NRC Proposed Rule on Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events'', RIN 3150–AI01, PA-MSC–0232 [Identified as PWROG]	X	NRC–2007–0008	ML073521547
Letter from T. Moser, dated December 17, 2007, ''Strategic Teaming and Resource Sharing (STARS) Comments on RIN 3150–AI01, Alternate Fracture Toughness Requirements for Protection against Pressurized Thermal Shock Events 72 FR 56275 (October 3,2007) [Identified as STARS]	X	NRC–2007–0008	ML073610558
''Statistical Procedures for Assessing Surveillance Data for 10 CFR Part 50.61a''	X		ML081290654
''A Physically Based Correlation of Irradiation Induced Transition Temperature Shifts for RPV Steel''	X		ML081000630
Supplemental Regulatory Analysis	X	NRC–2007–0008	ML081440673
Supplemental OMB Supporting Statement	X	NRC–2007–0008	ML081440736
Memo from J. Uhle, dated May 15, 2008, ''Embrittlement Trend Curve Development for Reactor Pressure Vessel Materials''	X		ML081120253
Draft ''Technical Basis for Revision of Regulatory Guide 1.99: NRC Guidance on Methods to Estimate the Effects of Radiation Embrittlement on the Charpy V-Notch Impact Toughness of Reactor Vessel Materials''	X		ML081120289

Document	PDR	Web	ERR (ADAMS)
"Comparison of the Predictions of RM–9 to the IVAR and RADAMO Databases"	X		ML081120365
Memo from M. Erickson Kirk, dated December 12, 2007, "New Data from Boiling Water Reactor Vessel Integrity Program (BWRVIP) Integrated Surveillance Project (ISP)"	X		ML081120380
"Further Evaluation of High Fluence Data"	X		ML081120600

VIII. Plain Language

The Presidential memorandum ''Plain Language in Government Writing'' published in June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** heading of this notice.

IX. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical.

The NRC determined that there is only one technical standard developed that could be utilized for characterizing the embrittlement correlations. That standard is the American Society for Testing and Materials (ASTM) standard E–900, ''Standard Guide for Predicting Radiation-Induced Temperature Transition Shift in Reactor Vessel Materials.'' This standard contains a different embrittlement correlation than that of this supplemental proposed rule. However, the correlation developed by the NRC has been more recently calibrated to available data. As a result, ASTM standard E–900 is not a practical candidate for application in the technical basis for the supplemental proposed rule because it does not represent the broad range of conditions necessary to justify a revision to the regulations.

The ASME Code requirements are utilized as part of the volumetric examination analysis requirements of the supplemental proposed rule. ASTM Standard Practice E 185, ''Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels,'' is incorporated by reference in 10 CFR Part 50, Appendix H and utilized to determine 30-foot-pound transition temperatures. These standards were selected for use in the supplemental proposed rule based on their use in other regulations within 10 CFR Part 50 and their applicability to the subject of the desired requirements.

The NRC will consider using a voluntary consensus standard in the final rule if an appropriate standard is identified in the public comment period for this supplemental proposed rule.

X. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, Subpart A, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. This determination was made as part of the proposed rulemaking issued on October 3, 2007 (72 FR 56275), and remains applicable to this supplemental proposed rulemaking.

XI. Paperwork Reduction Act Statement

This supplemental proposed rule would contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq*). This supplemental proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Part 50, ''Alternate Fracture Toughness Requirements for Protection against Pressurized Thermal Shock Events (10 CFR 50.61 and 50.61a)'' supplemental proposed rule.

The form number if applicable: Not applicable.

How often the collection is required: Collections would be initially required for PWR licensees utilizing the requirements of 10 CFR 50.61a as an alternative to the requirements of 10 CFR 50.61. Collections would also be required, after implementation of the new 10 CFR 50.61a, when any change is made to the design or operation of the facility that affects the calculated RT_{MAX-X} value. Collections would also be required during the scheduled periodic ultrasonic examination of beltline welds.

Who will be required or asked to report: Licensees of currently operating PWRs utilizing the requirements of 10 CFR 50.61a in lieu of the requirements of 10 CFR 50.61 would be subject to all of the proposed requirements in this rulemaking.

An estimate of the number of annual responses: 2.

The estimated number of annual respondents: 1.

An estimate of the total number of hours needed annually to complete the requirement or request: 363 hours (253 hours annually for record keeping plus 110 hours annually for reporting).

Abstract: The NRC is proposing to amend its regulations to provide updated fracture toughness requirements for protection against PTS events for PWR pressure vessels. The supplemental proposed rule would provide new PTS requirements based on updated analysis methods. This action is necessary because the existing requirements are based on unnecessarily conservative probabilistic fracture mechanics analyses. This action is expected to reduce regulatory burden for licensees, specifically those licensees that expect to exceed the existing requirements before the expiration of their licenses. These new requirements would be utilized by licensees of currently operating PWRs as an alternative to complying with the existing requirements.

The NRC is seeking public comment on the potential impact of the information collections contained in this supplemental proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Estimate of burden?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by September 10, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2007–0008. Comments can be submitted in electronic form via the Federal e-Rulemaking Portal at *http://www.regulations.gov* by search for Docket No. NRC–2007–0008. Comments can be mailed to NRC Clearance Officer, Russell Nichols (T–5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Russell Nichols (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at (301) 415–6874, or by e-mail to *INFOCOLLECTS.Resource@nrc.gov*. Comments can be mailed to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503, or by e-mail to *Nathan_J._Frey@omb.eop.gov*, or by telephone at (202) 395–7345.

Public Protection Notification

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

XII. Regulatory Analysis

The NRC has issued a supplemental regulatory analysis for this supplemental proposed rulemaking. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comments on this supplemental draft regulatory analysis. Availability of the supplemental regulatory analysis is provided in Section VII of this notice. Comments on the supplemental draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading of this notice.

XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This supplemental proposed rule would affect only the licensing and operation of currently operating nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIV. Backfit Analysis

The NRC has determined that the requirements in this supplemental proposed rule would not constitute backfitting as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis has not been prepared for this proposed rule.

The requirements of the current PTS rule, 10 CFR 50.61, would continue to apply to all PWR licensees and would not change as a result of this supplemental proposed rule. The requirements of the proposed PTS rule, including those in the supplemental proposed rule, would not be required, but could be utilized by PWR licensees with currently operating plants. Licensees choosing to implement the proposed PTS rule would be required to comply with its requirements as an alternative to complying with the requirements of the current PTS rule. Because the proposed PTS rule would not be mandatory for any PWR licensee, but rather could be voluntarily implemented, the NRC finds that this amendment would not constitute backfitting.

List of Subjects for 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.8(b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.61a, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.70, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and appendices A, B, E, G, H, I, J, K, M, N,O, Q, R, and S to this part.

* * * * *

3. Section 50.61a is added to read as follows:

§ 50.61a Alternate fracture toughness requirements for protection against pressurized thermal shock events.

(a) *Definitions.* Terms in this section have the same meaning as those set

forth in 10 CFR 50.61(a), with the exception of the term ''ASME Code''.

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, ''Rules for the Construction of Nuclear Power Plant Components,'' and Section XI, Division I, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' edition and addenda and any limitations and modifications thereof as specified in § 50.55a.

(2) RT_{MAX-AW} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found along axial weld fusion lines. RT_{MAX-AW} is determined under the provisions of paragraph (f) of this section and has units of °F.

(3) RT_{MAX-PL} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found in plates in regions that are not associated with welds found in plates. RT_{MAX-PL} is determined under the provisions of paragraph (f) of this section and has units of °F.

(4) RT_{MAX-FO} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws in forgings that are not associated with welds found in forgings. RT_{MAX-FO} is determined under the provisions of paragraph (f) of this section and has units of °F.

(5) RT_{MAX-CW} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found along the circumferential weld fusion lines. RT_{MAX-CW} is determined under the provisions of paragraph (f) of this section and has units of °F.

(6) RT_{MAX-X} means any or all of the material properties RT_{MAX-AW}, RT_{MAX-PL}, RT_{MAX-FO}, or RT_{MAX-CW} for a particular reactor vessel.

(7) φt means fast neutron fluence for neutrons with energies greater than 1.0 MeV. φt is determined under the provisions of paragraph (g) of this section and has units of n/cm^2.

(8) φ means average neutron flux. φ is determined under the provisions of paragraph (g) of this section and has units of $n/cm^2/sec$.

(9) ΔT_{30} means the shift in the Charpy V-notch transition temperature produced by irradiation defined at the 30 ft-lb energy level. The ΔT_{30} value is determined under the provisions of paragraph (g) of this section and has units of °F.

(10) *Surveillance data* means any data that demonstrates the embrittlement trends for the beltline materials, including, but not limited to, data from test reactors or surveillance programs at other plants with or without a surveillance program integrated under 10 CFR Part 50, Appendix H.

(11) T_c means cold leg temperature under normal full power operating conditions, as a time-weighted average from the start of full power operation through the end of licensed operation. T_c has units of °F.

(b) *Applicability.* Each licensee of a pressurized water nuclear power reactor, whose original operating license was issued prior to [EFFECTIVE DATE OF FINAL RULE], and the holder of any operating license issued under this part or part 54 for the Watts Bar Unit 2 facility, may utilize the requirements of this section as an alternative to the requirements of 10 CFR 50.61.

(c) *Request for Approval.* Prior to implementation of this section, each licensee shall submit a request for approval in the form of a license amendment together with the documentation required by paragraphs (c)(1), (c)(2), and (c)(3) of this section for review and approval to the Director, Office of Nuclear Reactor Regulation (Director). The information required by paragraphs (c)(1), (c)(2), and (c)(3) of this section must be submitted for review and approval by the Director at least three years before the limiting RT_{PTS} value calculated under 10 CFR 50.61 is projected to exceed the PTS screening criteria in 10 CFR 50.61 for plants licensed under this part.

(1) Each licensee shall have projected values of RT_{MAX-X} for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{MAX-X} values must use the calculation procedures given in paragraphs (f) and (g) of this section, except as provided in paragraphs (f)(6) and (f)(7) of this section. The assessment must specify the bases for the projected value of RT_{MAX-X} for each reactor vessel beltline material, including the assumptions regarding future plant operation (e.g., core loading patterns, projected capacity factors, etc.); the copper (Cu), phosphorus (P), manganese (Mn), and nickel (Ni) contents; the reactor cold leg temperature (T_C); and the neutron flux and fluence values used in the calculation for each beltline material.

(2) Each licensee shall perform an examination and an assessment of flaws in the reactor vessel beltline as required by paragraph (e) of this section. The licensee shall verify that the requirements of paragraphs (e)(1) through (e)(3) have been met and submit all documented indications and the neutron fluence map required by paragraph (e)(1)(iii) to the Director in its application to utilize 10 CFR 50.61a. If analyses performed under paragraph (e)(4) of this section are used to justify continued operation of the facility, approval by the Director is required prior to implementation.

(3) Each licensee shall compare the projected RT_{MAX-X} values for plates, forgings, axial welds, and circumferential welds to the PTS screening criteria for the purpose of evaluating a reactor vessel's susceptibility to fracture due to a PTS event. If any of the projected RT_{MAX-X} values are greater than the PTS screening criteria in Table 1 of this section, then the licensee may propose the compensatory actions or plant-specific analyses as required in paragraphs (d)(3) through (d)(7) of this section, as applicable, to justify operation beyond the PTS screening criteria in Table 1 of this section.

(d) *Subsequent Requirements.* Licensees who have been approved to utilize 10 CFR 50.61a under the requirements of paragraph (c) of this section shall comply with the requirements of this paragraph.

(1) Whenever there is a significant change in projected values of RT_{MAX-X}, such that the previous value, the current value, or both values, exceed the screening criteria prior to the expiration of the plant operating license; or upon the licensee's request for a change in the expiration date for operation of the facility; a reassessment of RT_{MAX-X} values documented consistent with the requirements of paragraph (c)(1) and (c)(3) of this section must be submitted for review and approval to the Director. If the Director does not approve the assessment of RT_{MAX-X} values, then the licensee shall perform the actions required in paragraphs (d)(3) through (d)(7) of this section, as necessary, prior to operation beyond the PTS screening criteria in Table 1 of this section.

(2) Licensees shall determine the impact of the subsequent flaw assessments required by paragraphs (e)(1)(i), (e)(1)(ii), (e)(2), and (e)(3) of this section and shall submit the assessment for review and approval to the Director within 120 days after completing a volumetric examination of reactor vessel beltline materials as required by Section XI of the ASME Code. If a licensee is required to implement paragraphs (e)(4) and (e)(5) of this section, a reanalysis in accordance with paragraphs (e)(4) and (e)(5) of this section is required within one year of the subsequent ASME Code inspection.

(3) If the value of RT_{MAX-X} is projected to exceed the PTS screening criteria, then the licensee shall implement those flux reduction

programs that are reasonably practicable to avoid exceeding the PTS screening criteria. The schedule for implementation of flux reduction measures may take into account the schedule for review and anticipated approval by the Director of detailed plant-specific analyses which demonstrate acceptable risk with RT_{MAX-X} values above the PTS screening criteria due to plant modifications, new information, or new analysis techniques.

(4) If the analysis required by paragraph (d)(3) of this section indicates that no reasonably practicable flux reduction program will prevent the RT_{MAX-X} value for one or more reactor vessel beltline materials from exceeding the PTS screening criteria, then the licensee shall perform a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent the potential for an unacceptably high probability of failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the PTS screening criteria is to be allowed. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted to the Director at least three years before RT_{MAX-X} is projected to exceed the PTS screening criteria.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted under paragraphs (d)(3) and (d)(4) of this section, the Director may, on a case-by-case basis, approve operation of the facility with RT_{MAX-X} values in excess of the PTS screening criteria. The Director will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Director concludes, under paragraph (d)(5) of this section, that operation of the facility with RT_{MAX-X} values in excess of the PTS screening criteria cannot be approved on the basis of the licensee's analyses submitted under paragraphs (d)(3) and (d)(4) of this section, then the licensee shall request a license amendment, and receive approval by the Director, prior to any operation beyond the PTS screening criteria. The request must be based on modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or on further analyses based on new information or improved methodology.

(7) If the limiting RT_{MAX-X} value of the facility is projected to exceed the PTS screening criteria and the requirements of paragraphs (d)(3) through (d)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment under the requirements of § 50.66 to recover the fracture toughness of the material. The reactor vessel may be used only for that service period within which the predicted fracture toughness of the reactor vessel beltline materials satisfy the requirements of paragraphs (d)(1) through (d)(6) of this section, with RT_{MAX-X} values accounting for the effects of annealing and subsequent irradiation.

(e) *Examination and Flaw Assessment Requirements.* The volumetric examinations results evaluated under paragraphs (e)(1), (e)(2), and (e)(3) of this section must be acquired using procedures, equipment and personnel that have been qualified under the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6.

(1) The licensee shall verify that the indication density and size distributions within the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume [1] are within the flaw density and size distributions in Tables 2 and 3 of this section based on the test results from the volumetric examination. The allowable number of flaws specified in Tables 2 and 3 of this section represent a cumulative flaw size distribution for each ASME flaw size increment. The allowable number of flaws for a particular ASME flaw size increment represents the maximum total number of flaws in that and all larger ASME flaw size increments. The licensee shall also demonstrate that no flaw exceeds the size limitations specified in Tables 2 and 3 of this section.

(i) The licensee shall determine the allowable number of weld flaws for the reactor vessel beltline by multiplying the values in Table 2 of this section by the total length of the reactor vessel beltline welds that were volumetrically inspected and dividing by 1000 inches of weld length.

(ii) The licensee shall determine the allowable number of plate or forging flaws for their reactor vessel beltline by multiplying the values in Table 3 of this section by the total plate or forging surface area that was volumetrically inspected in the beltline plates or forgings and dividing by 1000 square inches.

(iii) For each indication detected in the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume, the licensee shall document the dimensions of the indication, including depth and length, the orientation of the indication relative to the axial direction, and the location within the reactor vessel, including its azimuthal and axial positions and its depth embedded from the clad-to-base metal interface. The licensee shall also document a neutron fluence map, projected to the date of license expiration, for the reactor vessel beltline clad-to-base metal interface and indexed in a manner that allows the determination of the neutron fluence at the location of the detected indications.

(2) The licensee shall identify, as part of the examination required by paragraph (c)(2) of this section and any subsequent ASME Code, Section XI ultrasonic examination of the beltline welds, any indications within the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume that are located at the clad-to-base metal interface. The licensee shall verify that such indications do not open to the vessel inside surface using a qualified surface or visual examination.

(3) The licensee shall verify, as part of the examination required by paragraph (c)(2) of this section and any subsequent ASME Code, Section XI ultrasonic examination of the beltline welds, all indications between the clad-to-base metal interface and three-eighths of the reactor vessel thickness from the interior surface are within the allowable values in ASME Code, Section XI, Table IWB–3510–1.

(4) The licensee shall perform analyses to demonstrate that the reactor vessel will have a through-wall crack frequency (TWCF) of less than 1×10^{-6} per reactor year if the ASME Code, Section XI volumetric examination required by paragraph (c)(2) or (d)(2) of this section indicates any of the following:

(i) The indication density and size in the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume is not within the flaw density and size limitations specified in Tables 2 and 3 of this section;

(ii) Any indication in the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume that is larger [2] than

[1] The ASME Code, Section XI, Appendix VIII, Supplement 4 weld volume is the weld volume from the clad-to-base metal interface to the inner 1.0 inch or 10 percent of the vessel thickness, whichever is greater.

[2] Table 2 for the weld flaws is limited to flaw sizes that are expected to occur and were modeled from the technical basis supporting this rule. Similarly, Table 3 for the plate and forging flaws

Continued

the sizes in Tables 2 and 3 of this section;

(iii) There are linear indications that penetrate through the clad into the low alloy steel reactor vessel shell; or

(iv) Any indications between the clad-to-base metal interface and three-eighths [3] of the vessel thickness exceed the size allowable in ASME Code, Section XI, Table IWB–3510–1.

(5) The analyses required by paragraph (e)(4) of this section must address the effects on TWCF of the known sizes and locations of all indications detected by the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6 ultrasonic examination out to three-eighths of the vessel thickness from the inner surface, and may also take into account other reactor vessel-specific information, including fracture toughness information.

(f) *Calculation of RT_{MAX-X} values.* Each licensee shall calculate RT_{MAX-X} values for each reactor vessel beltline material using φt. φt must be calculated using an NRC-approved methodology.

(1) The values of RT_{MAX-AW}, RT_{MAX-PL}, RT_{MAX-FO}, and RT_{MAX-CW} must be determined using Equations 1 through 4 of this section.

(2) The values of ΔT_{30} must be determined using Equations 5 through 7 of this section, unless the conditions specified in paragraph (f)(6)(vi) of this section are met, for each axial weld fusion line, plate, and circumferential weld fusion line. The ΔT_{30} value for each axial weld fusion line calculated as specified by Equation 1 of this section must be calculated for the maximum fluence (φt_{FL}) occurring along a particular axial weld fusion line. The ΔT_{30} value for each plate calculated as specified by Equation 1 of this section must be calculated for φt_{FL} occurring along a particular axial weld fusion line. The ΔT_{30} value for each plate or forging calculated as specified by Equations 2 and 3 of this section are calculated for the maximum fluence (φt_{MAX}) occurring at the clad-to-base metal interface of each plate or forging. In Equation 4, the φt_{FL} value used for calculating the plate, forging, and circumferential weld RT_{MAX-CW} value is the maximum φt occurring for each material along the circumferential weld fusion line.

(3) The values of Cu, Mn, P, and Ni in Equations 6 and 7 of this section must represent the best estimate values for the material weight percentages. For a plate or forging, the best estimate value is normally the mean of the measured values for that plate or forging. For a weld, the best estimate value is normally the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, either the upper limiting values given in the material specification to which the vessel material was fabricated, or conservative estimates (mean plus one standard deviation) based on generic data [4] as shown in Table 4 of this section for P and Mn, must be used.

(4) The values of $RT_{NDT(U)}$ must be evaluated according to the procedures in the ASME Code, Section III, paragraph NB–2331. If any other method is used for this evaluation, the licensee shall submit the proposed method for review and approval by the Director along with the calculation of RT_{MAX-X} values required in paragraph (c)(1) of this section.

(i) If a measured value of $RT_{NDT(U)}$ is not available, a generic mean value of $RT_{NDT(U)}$ for the class [5] of material must be used if there are sufficient test results to establish a mean.

(ii) The following generic mean values of $RT_{NDT(U)}$ must be used unless justification for different values is provided: 0 °F for welds made with Linde 80 weld flux; and −56 °F for welds made with Linde 0091, 1092, and 124 and ARCOS B–5 weld fluxes.

(5) The value of T_c in Equation 6 of this section must represent the weighted time average of the reactor cold leg temperature under normal operating full power conditions from the beginning of full power operation through the end of licensed operation.

(6) The licensee shall verify that an appropriate RT_{MAX-X} value has been calculated for each reactor vessel beltline material. The licensee shall consider plant-specific information that could affect the use of Equations 5 though 7 of this section for the determination of a material's ΔT_{30} value.

(i) The licensee shall evaluate the results from a plant-specific or integrated surveillance program if the surveillance data satisfy the criteria described in paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section:

(A) The surveillance material must be a heat-specific match for one or more of the materials for which RT_{MAX-X} is being calculated. The 30-foot-pound transition temperature must be determined as specified by the requirements of 10 CFR Part 50, Appendix H.

(B) If three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, the licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts. This must be achieved by evaluating the surveillance data for consistency with the embrittlement model by following the procedures specified by paragraphs (f)(6)(ii), (f)(6)(iii), and (f)(6)(iv) of this section. If fewer than three surveillance data points exist for a specific material, then the embrittlement model must be used without performing the consistency check.

(ii) The licensee shall estimate the mean deviation from the embrittlement model for the specific data set (*i.e.* , a group of surveillance data points representative of a given material). The mean deviation from the embrittlement model for a given data set must be calculated using Equations 8 and 9 of this section. The mean deviation for the data set must be compared to the maximum heat-average residual given in Table 5 or derived using Equation 10 of this section. The maximum heat-average residual is based on the material group into which the surveillance material falls and the number of surveillance data points. The surveillance data analysis must use the criteria in paragraphs (f)(6)(v) and (f)(6)(vi) of this section. For surveillance data sets with greater than 8 shift points, the maximum credible heat-average residual must be calculated using Equation 10 of this section. The value of σ used in Equation 10 of this section must be obtained from Table 5 of this section.

(iii) The licensee shall estimate the slope of the embrittlement model residuals (estimated using Equation 8) plotted as a function of the base 10 logarithm of neutron fluence for the specific data set. The licensee shall estimate the T-statistic for this slope (T_{SURV}) using Equation 11 and compare this value to the maximum permissible T-statistic (T_{MAX}) in Table 6. The surveillance data analysis must follow the criteria in paragraphs (f)(6)(v) and (f)(6)(vi) of this section. For surveillance data sets with greater than 15 shift points, the T_{MAX} value must be calculated using Student's T distribution with a significance level (α) of 1 percent for a one-tailed test.

stops at the maximum flaw size modeled for these materials in the technical basis supporting this rule.

[3] Because flaws greater than three-eighths of the vessel wall thickness from the inside surface do not contribute to TWCF, flaws greater than three-eighths of the vessel wall thickness from the inside surface need not be analyzed for their contribution to PTS.

[4] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of ''generic data.''

[5] The class of material for estimating $RT_{NDT(U)}$ must be determined by the type of welding flux (Linde 80, or other) for welds or by the material specification for base metal.

(iv) The licensee shall estimate the two largest positive deviations (*i.e.* , outliers) from the embrittlement model for the specific data set using Equations 8 and 12. The licensee shall compare the largest normalized residual (r*) to the appropriate allowable value from the third column in Table 7 and the second largest normalized residual to the appropriate allowable value from the second column in Table 7. The surveillance data analysis must follow the criteria in paragraphs (f)(6)(v) and (f)(6)(vi) of this section.

(v) The ΔT_{30} value must be determined using Equations 5, 6, and 7 of this section if all three of the following criteria are satisfied:

(A) The mean deviation from the embrittlement model for the data set is equal to or less than the value in Table 5 or the value derived using Equation 10 of this section;

(B) The T-statistic for the slope (T_{SURV}) estimated using Equation 11 is equal to or less than the maximum permissible T-statistic (T_{MAX}) in Table 6; and

(C) The largest normalized residual value is equal to or less than the appropriate allowable value from the third column in Table 7 and the second largest normalized residual value is equal to or less than the appropriate allowable value from the second column in Table 7.

(vi) If any of the criteria described in paragraph (f)(6)(v) of this section are not satisfied, the licensee shall review the data base for that heat in detail, including all parameters used in Equations 4, 5, and 6 of this section and the data used to determine the baseline Charpy V-notch curve for the material in an unirradiated condition. The licensee shall submit an evaluation of the surveillance data and shall, on the basis of this review, propose ΔT_{30} and RT_{MAX-X} values, considering their plant-specific surveillance data, to be used for evaluation relative to the acceptance criteria of this rule. These evaluations shall be submitted for the review and approval by the Director at the time of the initial application. For each surveillance capsule removed from the reactor vessel after the submittal of the initial application, the licensee shall perform the analyses required by paragraph (f)(6) of this section. The analyses must be submitted for the review and approval by the Director in the form of a license amendment, and must be submitted no later than two years after the capsule is withdrawn from the vessel.

(7) The licensee shall report any information that significantly improves the accuracy of the RT_{MAX-X} value to the Director. Any value of RT_{MAX-X} that has been modified as specified in paragraph (f)(6)(iv) of this section is subject to the approval of the Director when used as provided in this section.

(g) *Equations and variables used in this section.*

$$\text{Equation 1: } RT_{MAX\text{-}AW} = MAX\left\{\left[RT_{NDT(u)\text{ - plate}} + \Delta T_{30\text{ - plate}}\left(\varphi t_{FL}\right)\right],\ \left[RT_{NDT(u)\text{ - axial weld}} + \Delta T_{30\text{ - axial weld}}\left(\varphi t_{FL}\right)\right]\right\}$$

$$\text{Equation 2: } RT_{MAX\text{-}PL} = RT_{NDT(u)\text{ - plate}} + \Delta T_{30\text{ - plate}}\left(\varphi t_{MAX}\right)$$

$$\text{Equation 3: } RT_{MAX\text{-}FO} = RT_{NDT(u)\text{ - forging}} + \Delta T_{30\text{ - forging}}\left(\varphi t_{MAX}\right)$$

$$\text{Equation 4: } RT_{MAX\text{-}CW} = MAX\left\{\left[RT_{NDT(u)\text{ - plate}} + \Delta T_{30\text{ - plate}}\left(\varphi t_{MAX}\right)\right],\ \left[RT_{NDT(u)\text{ - circweld}} + \Delta T_{30\text{ - circweld}}\left(\varphi t_{MAX}\right)\right],\left[RT_{NDT(u)\text{ - forging}} + \Delta T_{30\text{ - forging}}\left(\varphi t_{MAX}\right)\right]\right\}$$

$$\text{Equation 5: } \Delta T_{30} = MD + CRP$$

$$\text{Equation 6: } MD = A\times\left(1-0.001718\times T_C\right)\times\left(1+6.13\times P\times Mn^{2.471}\right)\times\varphi t_e^{0.5}$$

$$\text{Equation 7: } CRP = B\times\left(1+3.77\times Ni^{1.191}\right)\times f\left(Cu_e, P\right)\times g\left(Cu_e, Ni, \varphi t_e\right)$$

Where:

P [wt-%] = phosphorus content

Mn [wt-%] = manganese content

Ni [wt-%] = nickel content

Cu [wt-%] = copper content

$A = 1.140\times10^{-7}$ for forgings

$= 1.561\times10^{-7}$ for plates

$= 1.417\times10^{-7}$ for welds

B = 102.3 for forgings

= 102.5 for plates in non-Combustion Engineering manufactured vessels

= 135.2 for plates in Combustion Engineering vessels

= 155.0 for welds

$\varphi te = \varphi$ for $\varphi \geq 4.39\times10^{10}$ n/cm^2/sec

$= \varphi t\times(4.39\times10_{10} / \varphi)^{0.2595}$ for $\varphi < 4.39\times10^{10}$ n/cm^2/sec

Where:

φ[n/cm^2/sec] = average neutron flux

t[sec] = time that the reactor has been in full power operation

φt[n/cm^2] = $\varphi\times t$

$f(Cu_e,P) = 0$ for $Cu \leq 0.072$

$= [Cu_e - 0.072]^{0.668}$ for $Cu > 0.072$ and $P \leq 0.008$

$= [Cu_e - 0.072 + 1.359\times(P-0.008)]^{0.668}$ for $Cu > 0.072$ and $P > 0.008$

and $Cu_e = 0$ for $Cu \leq 0.072$

= MIN (Cu, maximum Cu_e) for $Cu > 0.072$ and maximum $Cu_e = 0.243$ for Linde 80 welds

= 0.301 for all other materials

$g(Cu_e,Ni,\varphi t_e) = 0.5 + (0.5\times\tanh\{[\log_{10}(\varphi t_e) + (1.1390\times Cu_e) - (0.448\times Ni) - 18.120] / 0.629\})$

Equation 8: Residual (r) = measured ΔT_{30} − predicted ΔT_{30} (by Equations 5, 6 and 7)

Equation 9: Mean deviation for a data set of n data points $= (1/n) \times \sum_{i=1}^{n} r_i$

Equation 10: Maximum credible heat-average residual = $2.33\sigma/n^{0.5}$

Where:

n = number of surveillance shift data points (sample size) in the specific data set

σ = standard deviation of the residuals about the model for a relevant material group given in Table 5.

Equation 11: $T_{SURV} = \frac{m}{se(m)}$

Where:

m = the slope of a plot of all of the *r* values (estimated using Equation 8) versus the base 10 logarithm of the neutron fluence for each r value. The slope shall be estimated using the method of least squares.

se(m) = the least squares estimate of the standard-error associated with the estimated slope value *m*.

Equation 12: $r^* = \frac{r}{\sigma}$

Where:

r is defined using Equation 8 and σ is given in Table 5.

TABLE 1—PTS SCREENING CRITERIA

Product form and RT_{MAX-X} values	RT_{MAX-X} limits [°F] for different vessel wall thicknesses[6] (T_{WALL})		
	$T_{WALL} \leq$ 9.5in.	9.5in. < $T_{WALL} \leq$ 10.5in.	10.5in. < $T_{WALL} \leq$ 11.5in.
Axial Weld, RT_{MAX-AW}	269	230	222
Plate, RT_{MAX-PL}	356	305	293
Forging without underclad cracks, RT_{MAX-FO}	356	305	293
Axial Weld and Plate, RT_{MAX-AW} + RT_{MAX-PL}	538	476	445
Circumferential Weld, RT_{MAX-CW}[7]	312	277	269
Forging with underclad cracks, RT_{MAX-FO}	246	241	239

[6] Wall thickness is the beltline wall thickness including the clad thickness.

[7] RT_{PTS} limits contributes 1×10^{-8} per reactor year to the ractor vessel TWCF.

TABLE 2—ALLOWABLE NUMBER OF FLAWS IN WELDS

ASME section XI flaw size per IWA–3200	Range of Through-Wall Extent (TWE) of flaw [in.]	Allowable number of cumulative flaws per 1000 inches of weld length in the ASME section XI Appendix VIII supplement 4 inspection volume
0.05	0.025 ≤ TWE < 0.075	Unlimited.
0.10	0.075 ≤ TWE < 0.125	166.70.
0.15	0.125 ≤ TWE < 0.175	90.80.
0.20	0.175 ≤ TWE < 0.225	22.82.
0.25	0.225 ≤ TWE < 0.275	8.66.
0.30	0.275 ≤ TWE < 0.325	4.01.
0.35	0.325 ≤ TWE < 0.375	3.01.
0.40	0.375 ≤ TWE < 0.425	1.49.
0.45	0.425 ≤ TWE < 0.475	1.00.

TABLE 3—ALLOWABLE NUMBER OF FLAWS IN PLATES OR FORGING

ASME section XI flaw size per IWA–3200	Range of Through-Wall Extent (TWE) of flaw [in.]	Allowable number of cumulative flaws per 1000 square inches of inside diameter surface area in forgings or plates in the ASME section XI Appendix VIII supplement 4 inspection volume[8]
0.05	0.025 ≤ TWE < 0.075	Unlimited
0.10	0.075 ≤ TWE < 0.125	8.049
0.15	0.125 ≤ TWE < 0.175	3.146

TABLE 3—ALLOWABLE NUMBER OF FLAWS IN PLATES OR FORGING—Continued

ASME section XI flaw size per IWA–3200	Range of Through-Wall Extent (TWE) of flaw [in.]	Allowable number of cumulative flaws per 1000 square inches of inside diameter surface area in forgings or plates in the ASME section XI Appendix VIII supplement 4 inspection volume [8]
0.20	0.175 ≤ TWE < 0.225	0.853
0.25	0.225 ≤ TWE < 0.275	0.293
0.30	0.275 ≤ TWE < 0.325	0.0756
0.35	0.325 ≤ TWE < 0.375	0.0144

[8] Excluding underclad cracks in forgings.

TABLE 4—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES

Materials	P	Mn
Plates	0.014	1.45

TABLE 4—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES—Continued

Materials	P	Mn
Forgings	0.016	1.11

TABLE 4—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES—Continued

Materials	P	Mn
Welds	0.019	1.63

TABLE 5—MAXIMUM HEAT-AVERAGE RESIDUAL [°F] FOR RELEVANT MATERIAL GROUPS BY NUMBER OF AVAILABLE DATA POINTS

[Significance level = 1%]

Material group	σ [°F]	Number of available data points					
		3	4	5	6	7	8
Welds, for Cu > 0.072	26.4	35.5	30.8	27.5	25.1	23.2	21.7
Plates, for Cu > 0.072	21.2	28.5	24.7	22.1	20.2	18.7	17.5
Forgings, for Cu > 0.072	19.6	26.4	22.8	20.4	18.6	17.3	16.1
Weld, Plate or Forging, for Cu ≤ 0.072	18.6	25.0	21.7	19.4	17.7	16.4	15.3

TABLE 6—T_{MAX} VALUES FOR THE SLOPE DEVIATION TEST

[Significance level = 1%]

Number of available data points (n)	T_{MAX}
3	31.82
4	6.96
5	4.54
6	3.75
7	3.36
8	3.14
9	3.00
10	2.90
11	2.82
12	2.76
14	2.68
15	2.65

TABLE 7—THRESHOLD VALUES FOR THE OUTLIER DEVIATION TEST (SIGNIFICANCE LEVEL = 1%)

Number of available data points (n)	Second largest allowable normalized residual value (r*)	Largest allowable normalized residual value (r*)
3	1.55	2.71
4	1.73	2.81
5	1.84	2.88

TABLE 7—THRESHOLD VALUES FOR THE OUTLIER DEVIATION TEST (SIGNIFICANCE LEVEL = 1%)—Continued

Number of available data points (n)	Second largest allowable normalized residual value (r*)	Largest allowable normalized residual value (r*)
6	1.93	2.93
7	2.00	2.98
8	2.05	3.02
9	2.11	3.06
10	2.16	3.09
11	2.19	3.12
12	2.23	3.14
13	2.26	3.17
14	2.29	3.19
15	2.32	3.21

Dated at Rockville, Maryland, this 24th day of July 2008.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E8–18429 Filed 8–8–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0857; Directorate Identifier 2007–NM–317–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all AvCraft Dornier Model 328–300 airplanes. The existing AD currently requires modifying the electrical wiring of the fuel pumps; installing insulation at the flow control and shut-off valves, and other components of the environmental control system; installing markings at fuel wiring harnesses; replacing the wiring harness of the auxiliary fuel system with a new wiring harness; and installing insulated couplings in the fuel

system; as applicable. The existing AD also requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new inspections of the fuel tank system. This proposed AD would replace the flight-hour-based threshold for conducting certain initial inspections, with a calendar-based threshold. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by September 10, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact 328 Support Services GmbH, Post Box 1252, D–82231 Wessling, Germany.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0857; Directorate Identifier 2007–NM–317–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On July 20, 2005, we issued AD 2005–15–16, amendment 39–14205 (70 FR 44046, August 1, 2005), for certain AvCraft Dornier Model 328–300 airplanes. That AD requires modifying the electrical wiring of the fuel pumps; installing insulation at the flow control and shut-off valves, and other components of the environmental control system; installing markings at fuel wiring harnesses; replacing the wiring harness of the auxiliary fuel system with a new wiring harness; and installing insulated couplings in the fuel system; as applicable. That AD also requires revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate new inspections of the fuel tank system. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005–15–16, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has assumed responsibility for the airplane model subject to this AD, and has issued EASA Airworthiness Directive 2006–0197 [Corrected], dated July 11, 2006. The EASA airworthiness directive revises the threshold for conducting the initial inspections specified in the Airworthiness Limitations section. The threshold that we propose to revise was originally specified in two German airworthiness directives that correspond to AD 2005–15–16: German airworthiness directives D–2005–002 and D–2005–063, both dated January 26, 2005.

Relevant Service Information

Dornier has issued Section G, ''Fuel Tank System Limitations,'' Revision 2, dated January 31, 2005, of the Dornier 328 JET Airworthiness Limitations Document. The limitations in the document are divided into two sections as follows:

- System Code 28–00–00 (sub-tasks 28–00–00–02 and 28–00–00–03) specifies the scheduled maintenance tasks, which are detailed inspections of the outer and inner internal fuel tank harnesses.
- System Code 28–00–99–00 (sub-tasks 28–00–99–01, 28–00–99–02, 28–00–99–03, 28–00–99–04, and 28–00–99–05) specifies critical design configuration control limitations (CDCCLs). The limitations apply to the cable bundle between the fuel quantity indication system and the tank wall, and to separation of certain power cables and lines from fuel lines.

FAA's Determination and Requirements of the Proposed AD

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

This proposed AD would supersede AD 2005–15–16 and would retain the requirements of the existing AD. This proposed AD would also replace the flight-hour-based threshold for conducting certain initial inspections, with a calendar-based threshold.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Actions—	Work hours	Parts	Number of U.S.-registered airplanes	Cost per airplane	Fleet cost
Modification/installation with option 033F003 installed (required by AD 2005–15–16 and retained in this proposed AD).	95	$9,402	None, currently	$17,002 if an affected airplane is placed on the U.S. Register in the future.	None.
Modification/installation without option 033F003 installed (required by AD 2005–15–16 and retained in this proposed AD).	70	14,118	28	19,718	$552,104.
Airworthiness limitations revision	1	None	28	80	$2,240.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14205 (70 FR 44046, August 1, 2005) and adding the following new airworthiness directive (AD):

328 Support Services GMBH (Formerly Avcraft Aerospace GmbH): Docket No. FAA–2008–0857; Directorate Identifier 2007–NM–317–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 10, 2008.

Affected ADs

(b) This AD supersedes AD 2005–15–16.

Applicability

(c) This AD applies to all Dornier Model 328–300 airplanes, certificated in any category, serial numbers 3105 through 3223 inclusive.

Unsafe Condition

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

Compliance

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

Note 1: This AD requires revisions to certain operator maintenance documents to include inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Restatement of the Requirements of AD 2005–15–16

Without Option 033F003 Installed: Modification and Installations

(f) For airplanes without option 033F003 installed: Within 12 months after September 6, 2005 (the effective date of AD 2005–15–16), do the actions in Table 1 of this AD in accordance with the Accomplishment Instructions of AvCraft Service Bulletin SB–328J–00–197, dated August 23, 2004.

TABLE 1—REQUIREMENTS FOR AIRPLANES WITHOUT OPTION 033F003 INSTALLED

Do the following actions—	By accomplishing all the actions specified in—
(1) Modify the electrical wiring of the left-hand and right-hand fuel pumps.	Paragraph 1.B(1) of the service bulletin.
(2) Install insulation at the left-hand and right-hand flow control and shut-off valves and other components of the environmental control system.	Paragraph 1.B(2) of the service bulletin.
(3) Install markings at fuel wiring harnesses.	Paragraph 1.B(3) of the service bulletin.

With Option 033F003 Installed: Modification, Replacement, and Installation

(g) For airplanes with option 033F003 installed: Within 12 months after September 6, 2005, do the actions in Table 2 of this AD in accordance with the Accomplishment Instructions of AvCraft Service Bulletin SB–328J–00–198, dated August 23, 2004.

TABLE 2—REQUIREMENTS FOR AIRPLANES WITH OPTION 033F003 INSTALLED

Do the following actions—	By accomplishing all the actions specified in—
(1) Modify the electrical wiring of the left-hand and right-hand fuel pumps.	Paragraph 2.B(1) of the service bulletin.
(2) Replace the wiring harness of the auxiliary fuel system with a new wiring harness.	Paragraph 2.B(2) of the service bulletin.
(3) Install markings at fuel wiring harnesses.	Paragraph 2.B(3) of the service bulletin.
(4) Install insulated couplings in the fuel system.	Paragraph 2.B(5) of the service bulletin.

Revision to Airworthiness Limitations

(h) Within 12 months after September 6, 2005, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate the information in AvCraft Temporary Revision (TR) ALD–028, dated October 15, 2003, into the AvCraft 328JET Airworthiness Limitations Document. Thereafter, except as provided by paragraph (k) of this AD, no alternative inspection intervals may be approved for this fuel tank system.

Note 2: This may be done by inserting a copy of AvCraft TR ALD–028, dated October 15, 2003, in the AvCraft 328JET Airworthiness Limitations Document. When this TR has been included in general revisions of the AvCraft 328JET Airworthiness Limitations Document, the temporary revision no longer needs to be inserted into the revised Airworthiness Limitations document.

New Requirements of This AD

Revised Initial Compliance Time

(i) For Sub-tasks 28–00–00–02 and 28–00–00–03 (''Detailed Inspection of Outer and Inner Fuel Tank Harness Internal''), as identified in AvCraft TR ALD–028, dated October 15, 2003; or Section G, ''Fuel Tank System Limitations,'' Revision 2, dated January 31, 2005, of the Dornier 328 JET Airworthiness Limitations Document (ALD), the initial compliance time is within 8 years after the effective date of this AD. Thereafter, except as provided by paragraph (k) of this AD, these tasks must be accomplished at the repetitive interval specified in Section G, ''Fuel Tank System Limitations,'' Revision 2, dated January 31, 2005, of the Dornier 328 JET Airworthiness Limitations Document.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(j) After accomplishing the actions specified in paragraphs (f), (g), and (h), and the initial inspections in paragraph (i) of this AD, no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(l) EASA airworthiness directive 2006–0197 [Corrected], dated July 11, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on July 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–18434 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149404–07]

RIN 1545–BH34

Amendments to New Markets Tax Credit Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). The proposed regulations revise and clarify certain rules relating to recapture of the new markets tax credit and will affect certain taxpayers claiming the new markets tax credit. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 10, 2008. Outlines of topics to be discussed at the public hearing scheduled for December 12, 2008, at 10 a.m. must be received by November 3, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149404–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–149404–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–149404–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Julie Hanlon-Bolton, (202) 622–7028; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide and clarify rules relating to the new markets tax credit under section 45D of the Code. Section 45D was added to the Code by section 121 of the Community Renewal Tax Relief Act of 2000, Public Law 106–554 (114 Stat. 2763 (2000)) and amended by section 221 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418 (2004)), section 101 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 25 (2005)), and Division A, section 102 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922 (2006)). On December 28, 2004, the IRS and the Treasury Department published final regulations under section 45D (69 FR 77625), with corrections on January 28, 2005 (70 FR 4012).

Groups and organizations representing investors, qualified community development entities, businesses, and other entities involved with the new markets tax credit program have since submitted comments requesting further guidance on the

recapture of the credit. The commentators suggested that revising the final regulations to reduce recapture uncertainty would encourage investors to bring increased amounts of capital to low-income communities.

General Overview

Section 45D(a)(1) provides a new markets tax credit on a taxpayer's qualified equity investment (QEI) in a qualified community development entity (CDE). To qualify for the credit, among other requirements, substantially all of the taxpayer's cash must be used by the CDE to make qualified low-income community investments (QLICIs) pursuant to section 45D(b)(1)(B).

A CDE is any domestic corporation or partnership if, among other requirements, the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons pursuant to section 45D(c)(1). Section 45D(d)(1) provides that a QLICI is: (A) Any capital or equity investment in, or loan to, any qualified active low-income community business (QALICB); (B) the purchase from another CDE of any loan made by the entity that is a QLICI; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE. A QALICB is any corporation or partnership in which at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, provided certain other requirements are met pursuant to section 45D(d)(2).

Section 45D(g)(1) provides that, if there is a recapture event at any time during the 7-year period beginning on the date of the original issue of a QEI in a CDE, then the tax imposed by this chapter for the taxable year in which the event occurs must be increased by the credit recapture amount. Section 45D(g)(3) provides that a recapture event occurs with respect to an equity investment in a CDE if (A) such entity ceases to be a CDE, (B) the proceeds of the investment cease to be used to make QLICIs as required by section 45D(b)(1)(B), or (C) the QEI is redeemed by the CDE.

Explanation of Provisions

Redemption Safe Harbor for Partnership CDEs

Section 1.45D–1(e)(3)(iii) provides that, in the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of § 1.45D–1(e)(2)(iii) if the distribution does not exceed the CDE's operating income for the taxable year. In addition, a non-pro rata *de minimis* cash distribution by a CDE to a partner or partners during the taxable year will not be treated as a redemption provided the distribution does not exceed the lesser of 5 percent of the CDE's operating income for that taxable year or 10 percent of the partner's capital interest in the CDE.

Commentators expressed the concern that a CDE may not be able to calculate its operating income in time to make a distribution during the taxable year. Because most CDEs will make a low estimate of operating income in order to lessen the risk of not satisfying the requirements of the redemption safe harbor, many CDEs may not distribute the entire amount of operating income during the taxable year. In response to this concern, the proposed regulations provide that, in the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of § 1.45D–1(e)(2)(iii) if the distribution does not exceed the sum of the CDE's operating income for the taxable year and the CDE's undistributed operating income (if any) for the prior taxable year.

Additionally, for purposes of the redemption safe harbor for partnership CDEs, § 1.45D–1(e)(3)(iii) defines *operating income* as the sum of (A) the CDE's taxable income as determined under section 703 (except that (*1*) the items described in section 703(a)(1) shall be aggregated with the non-separately stated tax items of the partnership; and (*2*) any gain resulting from the sale of a capital asset under section 1221(a) or section 1231 property shall not be included in taxable income); (B) deductions under section 165 (but only to the extent the losses were realized from QLICIs under § 1.45D–1(d)(1)); (C) deductions under sections 167 and 168 (including the additional first-year depreciation under section 168(k)); (D) start-up expenditures amortized under section 195; and (E) organizational expenses amortized under section 709. The proposed regulations add tax-exempt income under section 103 and any other depreciation and amortization deductions under the Code to the list of Code sections that determine the amount of operating income.

Commentators have indicated that some CDEs are adding their distributive share of the deductions listed in § 1.45D–1(e)(3)(iii) from another partnership to the CDE's calculation of operating income. For example, some CDEs are adding their distributive share of the amortization and depreciation deductions under sections 167 and 168 from another partnership to the CDE's calculation of operating income. The proposed regulations clarify that a CDE may rely on § 1.704–1(b)(1)(vii) to determine its allocable share of the deductions listed in § 1.45D–1(e)(3)(iii) from another partnership to the CDE's calculation of its operating income. Therefore, § 1.704–1(b)(1)(vii) applies to treat an allocation to a partner of its share of partnership net or ''bottom line'' taxable income or loss as an allocation to such partner of the same share of each item of income, gain, loss, and deduction that is taken into account in computing the partner's net or ''bottom line'' taxable income or loss.

Termination of a Partnership CDE Under Section 708(b)(1)(B)

Under section 708(b)(1)(B), a partnership is considered as terminated if within a twelve-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits. Section 1.708–1(b)(4) provides, in part, that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: The partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up.

If the terminating partnership is a CDE, because of the deemed distribution of interests in that new partnership to the purchasing partner and the other remaining partners, a recapture event may be triggered under section 45D(g)(3)(C) and § 1.45D–1(e)(2)(iii). However, because the sale of a QEI is not a recapture event under section 45D(g)(3) and because the remaining partner or partners are not being cashed out, the IRS and the Treasury Department do not believe that the sale

of a QEI that causes the termination of a CDE partnership under section 708(b)(1)(B) should trigger recapture. Accordingly, the proposed regulations provide that a termination under section 708(b)(1)(B) of a CDE partnership is not a recapture event.

Reasonable Expectations

Section 1.45D–1(d)(6)(i) provides that an entity is generally treated as a QALICB for the duration of the CDE's investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a QALICB under § 1.45D–1(d)(4)(i) throughout the entire period of the investment or loan.

The proposed regulations clarify how the reasonable expectations rule of § 1.45D–1(d)(6)(i) applies when a CDE makes an investment in or loan to another CDE. The proposed regulations provide that a CDE may rely on § 1.45D–1(d)(6)(i) to treat an entity as a QALICB even if the CDE's investment in or loan to the entity is made through other CDEs under § 1.45D–1(d)(1)(iv)(A).

Commentators indicated that some CDEs are unsure whether they may rely on § 1.45D–1(d)(6)(i) if their investments involve the portions of business rule under section 45D(d)(2)(C), the rental to others of real property under sections 45D(d)(3)(A), and the exclusions from the definition of a qualified business under § 1.45D–1(d)(5)(iii). Section 1.45D–1(d)(6)(i) already applies to all of these rules in determining whether an entity meets the requirements to be a QALICB under § 1.45D–1(d)(4)(i). Nevertheless, the proposed regulations clarify that CDEs may rely on these rules when applying § 1.45D–1(d)(6)(i).

Proposed Effective Date

The rules contained in these regulations are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Request for Comments

The IRS and the Treasury Department invite taxpayers to submit comments on issues relating to this notice of proposed rulemaking. In particular, the IRS and the Treasury Department encourage taxpayers to submit comments on how to define, under § 1.45D–1(d)(2)(i), the dollar amounts received by a CDE ''in payment of, or for, capital, equity, or principal'' that are set aside either for financial counseling and other services, for an equity investment, or as principal received on a loan. Section 1.45D–1(d)(2)(i) provides that such amounts must be reinvested by the CDE in a QLICI no later than twelve months from the date of receipt to be treated as continuously invested in a QLICI. Commentators suggested defining amounts received ''in payment of, or for, capital, equity, or principal'' by using the same rules and redemption safe harbor in § 1.45D–1(e)(3), which defines when an investment is redeemed or otherwise cashed out by a CDE. The proposed regulations do not adopt this suggestion. The IRS and the Treasury Department believe this approach may be inappropriate because redeeming one dollar of an equity investment is a recapture event under section 45D(g)(3)(C), while failing to reinvest one dollar in a QLICI under § 1.45D–1(d)(2)(i) lowers the dollar amount treated as meeting the substantially-all requirement by one dollar.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the 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 Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 12, 2008, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by November 10, 2008. Outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by November 3, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Julie Hanlon-Bolton with the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.45D–1 is amended by:

1. Redesignating the paragraph (a) entries for paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) as paragraphs (e)(5), (e)(6), (e)(7), and (e)(8), respectively, adding a new entry for paragraph (e)(4), and revising the entry for paragraph (h)(2).

3. Revising paragraph (d)(6)(i).

4. Revising paragraph (e)(3)(iii) introductory text.

5. Redesignating paragraphs (e)(3)(iii)(B), (e)(3)(iii)(C), (e)(3)(iii)(D), and (e)(3)(iii)(E) as paragraphs (e)(3)(iii)(C), (e)(3)(iii)(D), (e)(3)(iii)(E), and (e)(3)(iii)(F), respectively, and adding new paragraph (e)(3)(iii)(B).

6. Revising newly-designated paragraph (e)(3)(iii)(D).

7. Redesignating paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) as paragraphs

(e)(5), (e)(6), (e)(7), and (e)(8), respectively, and adding new paragraph (e)(4).

8. Revising the heading for paragraph (h)(2) and adding a sentence at the end of the paragraph.

The additions and revisions read as follows:

§ 1.45D–1 New markets tax credit.

(a) * * *

(e) * * *

(4) Section 708(b)(1)(B) termination.

* * * * *

(h) * * *

(2) Exception for certain provisions.

* * * * *

(d) * * *

(6) * * *

(i) * * * Except as provided in paragraph (d)(6)(ii) of this section, an entity is treated as a qualified active low-income community business for the duration of the qualified community development entity's (CDE's) investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business under paragraphs (d)(4)(i) and (d)(5) of this section (including, if applicable, portions of business under paragraph (d)(4)(iii) of this section) throughout the entire period of the investment or loan. A CDE may rely on this paragraph (d)(6)(i) to treat an entity as a qualified active low-income community business even if the CDE's investment in or loan to the entity is made through other CDEs under paragraph (d)(1)(iv)(A) of this section.

(e) * * *

(3) * * *

(iii) *Capital interest in a partnership.* In the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of paragraph (e)(2)(iii) of this section if the distribution does not exceed the sum of the CDE's ''operating income'' for the taxable year and the CDE's undistributed ''operating income'' (if any) for the prior taxable year. For purposes of this paragraph (e)(3)(iii), § 1.704–1(b)(1)(vii) applies to treat an allocation to a partner of its share of partnership net or ''bottom line'' taxable income or loss as an allocation to such partner of the same share of each item of income, gain, loss, and deduction that is taken into account in computing the partner's net or ''bottom line'' taxable income or loss. In addition, a non-pro rata ''de minimis'' cash distribution by a CDE to a partner or partners during the taxable year will not be treated as a redemption. A non-pro rata ''de minimis'' cash distribution may not exceed the lesser of 5 percent of the CDE's ''operating income'' for that taxable year or 10 percent of the partner's capital interest in the CDE. For purposes of this paragraph (e)(3)(iii), with respect to any taxable year, ''operating income'' is the sum of:

* * * * *

(B) Tax-exempt income under section 103;

* * * * *

(D) Deductions under sections 167 and 168, including the additional first-year depreciation under section 168(k), and any other depreciation and amortization deductions under the Code;

* * * * *

(e) * * *

(4) *Section 708(b)(1)(B) termination.* A termination under section 708(b)(1)(B) of a CDE that is a partnership is not a recapture event.

* * * * *

(h) * * *

(2) *Exception for certain provisions.* * * * Paragraph (d)(6)(i) of this section as it relates to a CDE's investment under paragraph (d)(1)(iv)(A), paragraph (e)(3)(iii) of this section as it relates to the distribution of undistributed ''operating income'' for the prior taxable year and to the application of § 1.704–1(b)(1)(vii), paragraph (e)(3)(iii)(B) of this section, paragraph (e)(3)(iii)(D) of this section as it relates to any other depreciation and amortization deductions under the Code, and paragraph (e)(4) of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–18442 Filed 8–8–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 419

[CMS–1404–P]

RIN 0938–AP17

Medicare Program: Proposed Changes to the Hospital Outpatient Perspective Payment System and CY 2009 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates

Correction

In proposed rule document E8–15539 beginning on page 41416 in the issue of Friday, July 18, 2008, make the following correction:

On pages 41504 through 41505, Table 30 should be replaced to appear as follows:

BILLING CODE 4120–01–D

TABLE 30.--PROPOSED CY 2009 DRUG ADMINISTRATION APCs

Proposed CY 2009 APC	Proposed CY 2009 APC Median Cost	HCPCS Code	Long Descriptor
0436	$24.98	90471	Immunization administration (includes percutaneous, intradermal, subcutaneous, or intramuscular injections); one vaccine (single or combination vaccine/toxoid)
		90472	Immunization administration (includes percutaneous, intradermal, subcutaneous, or intramuscular injections); each additional vaccine (single or combination vaccine/toxoid)(List separately in addition to code for primary procedure)
		90473	Immunization administration by intranasal or oral route; one vaccine (single or combination vaccine/toxoid)
		90474	Immunization administration by intranasal or oral route; each additional vaccine (single or combination vaccine/toxoid) (List separately in addition to code for primary procedure)
		90761	Intravenous infusion, hydration; each additional hour (List separately in addition to code for primary procedure)
		90766	Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug); each additional hour (List separately in addition to code for primary procedure)
		90771	Subcutaneous infusion for therapy or prophylaxis (specify substance or drug); additional pump set-up with establishment of new subcutaneous infusion site(s) (List separately in addition to code for primary procedure)
		90772	Therapeutic, prophylactic or diagnostic injection (specify substance or drug); subcutaneous or intramuscular
		90779	Unlisted therapeutic, prophylactic or diagnostic intravenous or intra-arterial injection or infusion
		95115	Professional services for allergen immunotherapy not including provision of allergenic extracts; single injection
		95117	Professional services for allergen immunotherapy not including provision of allergenic extracts; two or more injections
		95145	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); single stinging insect venom
		95165	Professional services for the supervision of preparation and provision of antigens for allergen

Proposed CY 2009 APC	Proposed CY 2009 APC Median Cost	HCPCS Code	Long Descriptor
			immunotherapy; single or multiple antigens (specify number of doses)
		95170	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy; whole body extract of biting insect or other arthropod (specify number of doses)
		96549	Unlisted chemotherapy procedure
		G0008	Administration of influenza virus vaccine
		G0009	Administration of pneumococcal vaccine
0437	$36.59	90767	Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug); additional sequential infusion, up to 1 hour (List separately in addition to code for primary procedure)
		90770	Subcutaneous infusion for therapy or prophylaxis (specify substance or drug); each additional hour (List separately in addition to code for primary procedure)
		90773	Therapeutic, prophylactic or diagnostic injection (specify substance or drug); intra-arterial
		90774	Therapeutic, prophylactic or diagnostic injection (specify substance or drug); intravenous push, single or initial substance/drug
		90775	Therapeutic, prophylactic or diagnostic injection (specify substance or drug); each additional sequential intravenous push of a new substance/drug (List separately in addition to code for primary procedure)
		95144	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy, single dose vial(s) (specify number of vials)
		95148	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); four single stinging insect venoms
		96401	Chemotherapy administration, subcutaneous or intramuscular; non-hormonal anti-neoplastic
		96402	Chemotherapy administration, subcutaneous or intramuscular; hormonal anti-neoplastic
		96405	Chemotherapy administration; intralesional, up to and including 7 lesions
		96415	Chemotherapy administration, intravenous infusion technique; each additional hour (List separately in addition to code for primary procedure)
0438	$74.19	90760	Intravenous infusion, hydration; initial, 31 minutes to 1 hour
		90769	Subcutaneous infusion for therapy or prophylaxis (specify substance or drug); initial, up to one hour,

Proposed CY 2009 APC	Proposed CY 2009 APC Median Cost	HCPCS Code	Long Descriptor
			including pump set-up and establishment of subcutaneous infusion site(s)
		95146	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); two single stinging insect venoms
		95147	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); three single stinging insect venoms
		96406	Chemotherapy administration; intralesional, more than 7 lesions
		96411	Chemotherapy administration; intravenous, push technique, each additional substance/drug (List separately in addition to code for primary procedure)
		96417	Chemotherapy administration, intravenous infusion technique; each additional sequential infusion (different substance/drug), up to 1 hour (List separately in addition to code for primary procedure)
		96423	Chemotherapy administration, intra-arterial; infusion technique, each additional hour (List separately in addition to code for primary procedure)
0439	$126.58	90765	Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug); initial, up to 1 hour
		95149	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); five single stinging insect venoms
		96409	Chemotherapy administration; intravenous, push technique, single or initial substance/drug
		96420	Chemotherapy administration, intra-arterial; push technique
		96522	Refilling and maintenance of implantable pump or reservoir for drug delivery, systemic (eg, intravenous, intra-arterial)
		96542	Chemotherapy injection, subarachnoid or intraventricular via subcutaneous reservoir, single or multiple agents
0440	$190.72	95990	Refilling and maintenance of implantable pump or reservoir for drug delivery, spinal (intrathecal, epidural) or brain (intraventricular)
		95991	Refilling and maintenance of implantable pump or reservoir for drug delivery, spinal (intrathecal, epidural) or brain (intraventricular); administered by a physician
		96413	Chemotherapy administration, intravenous infusion technique; up to 1 hour, single or initial

Proposed CY 2009 APC	Proposed CY 2009 APC Median Cost	HCPCS Code	Long Descriptor
			substance/drug
		96416	Chemotherapy administration, intravenous infusion technique; initiation of prolonged chemotherapy infusion (more than 8 hours), requiring use of a portable or implantable pump
		96422	Chemotherapy administration, intra-arterial; infusion technique, up to one hour
		96425	Chemotherapy administration, intra-arterial; infusion technique, initiation of prolonged infusion (more than 8 hours), requiring the sue of a portable or implantable pump
		96440	Chemotherapy administration into pleural cavity, requiring and including thoracentesis
		96445	Chemotherapy administration into peritoneal cavity, requiring and including peritoneocentesis
		96450	Chemotherapy administration, into CNS (eg, intrathecal), requiring and including spinal puncture
		96521	Refilling and maintenance of portable pump
		C8957	Intravenous infusion for therapy/diagnosis; initiation of prolonged infusion (more than eight hours), requiring use of portable or implantable pump

[FR Doc. Z8–15539 Filed 8–8–08; 8:45 am]
BILLING CODE 4120–01–C

GENERAL SERVICES ADMINISTRATION

48 CFR Part 513

[GSAR Case 2007–G502; Docket 2008–0007; Sequence 16]

RIN 3090–AI67

General Services Acquisition Regulation; GSAR Case 2007–G502; Rewrite of GSAR Part 513, Simplified Acquisition Procedures

Correction

In proposed rule document E8–17549 beginning on page 44955 in the issue of Friday, August 1, 2008, make the following correction:

PART 513– [Removed]

On page 44956. in the third column, in the last line, the part heading should appear as shown above.

[FR Doc. Z8–17549 Filed 8–8–08; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 071001548–7287–02]

RIN 0648–AW10

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry Program

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS extends the comment period on the proposed rule to establish the National Saltwater Angler Registry Program. NMFS has received a request from the Gulf of Mexico Fishery Management Council to extend the deadline beyond its current 60-day comment period until a date following the Council's August 11–15 meeting. The extension of the comment period for ten days will allow the Council to adopt comments during its meeting and to submit them before the comment period closes, and will allow other interested parties additional time to submit comments. The comment deadline is extended from August 11, 2008, to August 21, 2008.

DATES: Comments must be received on or before August 21, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AW10, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 301–713–1875, Attn: Gordon Colvin.
- Mail: John Boreman, Director, Office of Science and Technology, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Attn: Gordon Colvin.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to

remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: 301–713–2367; fax: 301–713–1875; or e-mail: *gordon.colvin@noaa.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule to implement the National Saltwater Angler Registry Program was published on June 12, 2008 (73 FR 33381). The comment deadline established in the proposed rule was August 11, 2008. Subsequently, NMFS received a request from the Gulf of Mexico Fishery Management Council to extend the comment period until after the Council's scheduled August 8 to 11 meeting. The comment period is being extended for ten days until August 21, 2008, to accommodate the request of the Council, and to provide additional time for other interested parties to submit comments.

Authority: Authority: 16 U.S.C. 1881.

Dated: August 4, 2008.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8–18408 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AS71

Fisheries in the Western Pacific; Pelagic Fisheries; Squid Jig Fisheries

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council proposes to amend the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. If approved by the Secretary of Commerce, Amendment 15 would add three species of pelagic squid to the management unit, and establish Federal permitting and reporting requirements for squid jig fishing vessels over 50 ft in length. These vessels would also be required to carry observers if requested by NMFS. Combined, these measures are intended to enable the Council and NMFS to better monitor and manage the U.S. domestic pelagic squid fisheries.

DATES: Comments on Amendment 15, which includes an environmental assessment, must be received by October 10, 2008.

ADDRESSES: Comments on the amendment, identified by 0648–AS71, may be sent to either of the following addresses:

- Electronic Submission: Via the Federal e-Rulemaking Portal *www.regulations.gov*; or
- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit Confidential Business Information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 15, including an environmental assessment, are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at the Office of the Federal Register Web site: *www.gpoaccess.gov/fr*.

A small nearshore squid jig fishery operates around the Hawaiian islands of Kauai and Hawaii, targeting purple flying squid. An international squid jig fishery, comprised of U.S. and foreign vessels, operates on the Pacific high seas. The high seas U.S. squid jiggers have targeted neon flying squid in the North Pacific, and potentially could move into U.S. Exclusive Economic Zone waters in the western Pacific. Although no resource concerns have arisen to date, monitoring programs and mechanisms to implement management measures (should they become necessary) are both necessary. To address these needs, the Council recommends in Amendment 15 management measures that would improve data compiled on U.S. squid fisheries through new permitting, monitoring and reporting requirements, as follows:

- Add three pelagic squid species to the pelagic management unit (neon flying squid *Ommastrephes bartramii*, diamondback squid *Thysanoteuthis rhombus*, and purple flying squid *Sthenoteuthis oualaniensis*); and
- Require U.S. vessels greater than 50 ft in length overall that fish for pelagic squid in U.S. EEZ of the western Pacific to:

i. obtain Federal permits;

ii. carry Federal observers if requested by NMFS; and

iii. report any Pacific pelagic squid catch and effort either in Federal squid logbooks or via existing local reporting systems.

U.S. squid jig vessels that fish only on the high seas in the Pacific would be required to report their catch and effort using the Federal squid logbooks. The information collected on squid jig fishing would be compiled into a centralized database easily available to resource scientists and managers.

These measures, if implemented, would provide additional data and provisions to enable the Council and NMFS to better monitor and manage the U.S. domestic pelagic squid fisheries in the future.

Amendment 15 includes an environmental assessment (EA) that describes the existing squid fishery, management, and environment, and describes the potential environmental impacts of implementing the provisions recommended in Amendment 15. The EA tiers from a 2005 Final Environmental Impact Statement (70 FR 24038, May 6, 2005), and incorporates by reference the previous environmental impact analysis of five of the alternatives considered in Amendment 15. New information about future fishery management policies became available after the Final EIS was completed and the additional alternative considered in Amendment 15 is analyzed in the EA.

Public comments on proposed Amendment 15 must be received by October 10, 2008 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. A proposed rule to implement the amendment has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation in the near future.

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

Dated: August 1, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–18404 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 155
Monday, August 11, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Alabama Advisory Committee to the Commission will convene by conference call at 1:30 p.m. and adjourn at approximately 3 p.m. on Thursday, September 18, 2008. The purpose of this meeting is to review, discuss SAC transcript from community forum, ''Civil Rights Implications of Eminent Domain Policies and Practices in Alabama'' and ''Religious Freedom in Public Schools'' and plan future activities.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 56406570. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on September 11, 2008.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 11, 2008. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central 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 Central 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 FACA.

Dated in Washington, DC, August 6, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–18517 Filed 8–8–08; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Kansas Advisory Committee to the Commission will convene by conference call at 1 p.m. and adjourn at approximately 2 p.m. on Thursday, August 28, 2008. The purpose of this meeting is to plan a public briefing meeting.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 5788509. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on August 18, 2008.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by August 18, 2008. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central 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 Central 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 FACA.

Dated in Washington, DC, August 6, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–18515 Filed 8–8–08; 8:45 am]

BILLING CODE 6335–01–P

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 a planning meeting of the New Jersey Advisory Committee of the U.S. Commission on Civil Rights will convene at 1 p.m. and adjourn at 5 p.m. on Friday, September 5, 2008, at the Legislative Annex of the State House, 125 West State Street, Room 1, Trenton, New Jersey 08625–0099.

The purpose of this meeting is to receive and discuss subcommittee presentations that will be made in support of a proposed civil rights project.

Members of the public are entitled to submit written comments; the

comments must be received in the Eastern Regional Office by October 3, 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.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 6, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–18516 Filed 8–8–08; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Tuesday, August 19, 2008; 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda
II. Approval of Minutes
- July 11, 2008 Meeting
- July 28, 2008 Meeting

III. Announcements
IV. Staff Director's Report
V. Program Planning
- 2009 Briefing Topics
- 2009 Statutory Report Topics
- Discussion of FY 2010 Budget Submission

VI. Management and Operations
- Evaluation of AI on Order of Precedence

VII. State Advisory Committee Issues
- Discussion of SAC re-charter process

VIII. Future Agenda Items
IX. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582.

Dated: August 7, 2008.

David Blackwood,

General Counsel.

[FR Doc. E8–18603 Filed 8–7–08; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Voting and Civic Engagement Supplements to the Current Population Survey.

OMB Control Number: 0607–0466.

Form Number(s): CPS–263 (MIS–1) (L) (8–2007), CPS–263 (MIS–5) (L) (11–2006).

Type of Request: Reinstatement, with change of an expired collection.

Burden Hours: 7,600.

Number of Respondents: 54,000.

Average Hours per Response: 8 and a half minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the November 2008 Voting and Civic Engagement Supplements to the Current Population Survey (CPS). The Voting A *OMB Control Number:* 0607–0466.

Supplement (Voting and Registration supplement in previous years) continues the biennial collection of data concerning voting and registration that has been requested periodically since 1964. The data yield statistics on voter (and nonvoter) characteristics and current voter trends. The data will also enable policymakers to keep issues up to date, such as changes in participation in the election process by demographic characteristics such as age, sex, race, ethnicity, and educational attainment.

The Corporation for National and Community Service (CNCS) has entered into an interagency agreement with the Census Bureau to conduct the Civic Engagement supplement, which will appear for the first time in conjunction with the CPS. The civic engagement supplement will provide information on the extent to which American communities are places where individuals are civically active. It will also provide information on the number of Americans who are active in their communities, communicating with one another on issues of public concern, and interacting with public institutions and private enterprises. The information will also provide the number of Americans who engage in activities that promote positive relationships with those of equal and differing socio-economic or professional levels. This survey will be the only source of nationally representative data on such information as: level of participation in organized groups, extent of political action and knowledge, extent of connections with other community members, and how often individuals get news and information from various media sources.

When combined with demographic characteristics (age, sex, race, education, occupation, income), the data can provide information on the relationship between these characteristics and the level of civic engagement in the United States. Government agency analysts and private, state and local leaders will use this data to compare levels in their area of interest to the national level of civic engagement, and to formulate policies that foster healthy communities.

This clearance will also cover the collection in November 2010, the Voting supplement, which will consist of the voting and registration questions only.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 8(b) and 182; Title 29 U.S.C., Section 1.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: August 6, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18453 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Service Order Form

AGENCY: International Trade Administration.

ACTION: Notice.

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

DATES: Written comments must be submitted on or before October 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Suzan Winters—(202) 482–6042, *Suzan.Winters@mail.doc.gov,* Fax: (202) 482–2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service (CS) is mandated by Congress to help U.S. businesses, particularly small- and medium-sized companies, export their products and services to global markets. As part of its mission, CS provides market entry/expansion services and trade events to U.S. companies. The Service Order Form (formerly the Export Information Services Order Form) is needed to collect information to enable small and medium size companies to order CS services, which enhance their ability to begin exporting or to expand their existing exporting efforts.

II. Method of Collection

Sent via e-mail and then completed by client electronically.

III. Data

OMB Control Number: 0625–0143.

Form Number(s): ITA–4096P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Response: 5–10 minutes.

Estimated Total Annual Burden Hours: 1,667.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

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

Dated: August 6, 2008

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18452 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–840)

Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: August 11, 2008.

SUMMARY: On April 7, 2008, the Department of Commerce published its preliminary results of the administrative review of the antidumping duty order on certain orange juice from Brazil. The period of review (POR) is August 24, 2005, through February 28, 2007. We are rescinding the review with respect to one company because this company had no entries of subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2008, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain orange juice from Brazil. *See Certain Orange Juice from Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18773 (Apr. 7, 2008) (*Preliminary Results*).

We invited parties to comment on our preliminary results of review. In May 2008, we received case briefs from the petitioners (*i.e.*, Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation) and the respondents (*i.e.*, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale)). Also in May 2008, we received rebuttal briefs from the petitioners and the respondents.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as not–from-concentrate

(NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra–Frutesp (SA) (Coinbra–Frutesp), Cutrale, Fischer, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail–sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Period of Review

The POR is August 24, 2005, through February 28, 2007.

Partial Rescission of Review

On May 1, 2007, Coinbra–Frutesp informed the Department that it had no entries of subject merchandise to the United States during the POR. We have confirmed this with U.S. Customs and Border Protection (CBP). *See* the March 31, 2008, memorandum to the file from Elizabeth Eastwood entitled, ''Placing Customs Entry Data on the Record of the 2005–2007 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil.'' Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to Coinbra–Frutesp. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Cutrale and Fischer made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. *See Preliminary Results*, 73 FR at 18777. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results*, except as discussed in the Issues and Decision Memorandum (the Decision Memo).

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1) and (2) of the Act.

Therefore, for purposes of these final results, we found that Cutrale and Fischer made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted–average margin percentages exist for the period August 24, 2005, through February 28, 2007:

Manufacturer/Exporter	Percent Margin
Fischer S.A. Comercio, Industria, and Agricultura	4.81
Sucocitrico Cutrale, S.A.	0.45

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Cutrale and Fischer reported the entered value for some or all of their U.S. sales, we have calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. For Fischer's U.S. sales reported without entered values, we have calculated importer–specific per–unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer–specific *ad valorem* ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that

they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate established in the LTFV investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of certain orange juice from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.51 percent, the all–others rate established in the LTFV investigation. *See Antidumping Duty Order: Certain Orange Juice from Brazil*, 72 FR 12183 (Mar. 9, 2006). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

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

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and section 351.221(b)(5) of the Department's regulations.

Dated: August 5, 2008.

David M. Spooner.

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

General Issues

1. Offsetting of Negative Margins

2. Granting an Offset for U.S. Duty Drawback

3. Ministerial Errors in the Preliminary Results

4. Universe of Reviewed U.S. Sales Transactions

Company–Specific Issues

5. Constructed Export Price (CEP) Offset for Cutrale

6. Treating Sales to One of Cutrale's Home Market Customers as Affiliated Party Transactions

7. Calculation of CEP Profit for Cutrale

8. The Calculation of the Denominator used in the General and Administrative (G&A) and Financial Expense Ratios for Cutrale

9. Valuation of Fruit Purchased from Affiliates for Cutrale

10. Inclusion of Export Financing Expenses in the Calculation of the Financial Expense Ratio for Cutrale

11. Unit of Measure for Comparison Purposes for NFC for Fischer

12. Product Matching Methodology for Fischer

13. Granting a Quantity Adjustment for Fischer's NFC Sales

14. Fischer's Home Market NFC Sales Used for Comparison Purposes

15. The Application of Inventory Carrying Costs by Control Number for Fischer

16. The Calculation of Harbor Maintenance Fees for One U.S. Sales Observation for Fischer

17. Request to Treat Two of Fischer's U.S. Sales as Export Price Transactions

18. Fischer's Raw Material Cost Allocation Methodology

19. Calculation of Fischer's G&A Expense Ratio

[FR Doc. E8–18479 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–933

Postponement of Preliminary Determination of Antidumping Duty Investigation: Frontseating Service Valves from the People's Republic of China

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

EFFECTIVE DATE: August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 8, 2008, the Department of Commerce (''the Department'') initiated an antidumping duty investigation on frontseating service valves from the People's Republic of China. *See Notice of Initiation of Antidumping Duty Investigation: Frontseating Service Valves from the People's Republic of China*, 73 FR 20250 (April 15, 2008).[1] The notice of initiation stated that the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). The preliminary determination is currently due no later than August 26, 2008.

On July 30, 2008, the petitioner, Parker–Hannifin Corporation, made a timely request, pursuant to 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination. Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination under by 50 days to no later than October 15, 2008. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

[1] The Department issued the initiation notice on April 8, 2008, and the initiation was published in the **Federal Register** on April 15, 2008.

Dated: August 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18478 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–806

Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Silicon Metal From the People's Republic of China

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

EFFECTIVE DATE: August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Scot Fullerton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4031 and (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from the People's Republic of China (''PRC'') for the period of review (''POR'') June 1, 2006, through May 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 30542 (June 1, 2007). On July 2, 2007, Globe Metallurgical Inc. (''Petitioner''), requested that the Department conduct an administrative review of 18 companies (collectively, ''Respondents''). On August 6, 2007, the Department published a notice of initiation of an antidumping duty administrative review on silicon metal from the PRC, in which it initiated a review of these Respondents. *See Notice of Initiation of the Administrative Review of the Antidumping Duty Order on Silicon Metal from the People's Republic of China*, 72 FR 43597 (August 6, 2007) (''*Initiation Notice*'').

On March 7, 2008, we preliminarily rescinded this review for certain companies based on evidence on the record indicating that there were no entries into the United States, and applied adverse facts available (''AFA'') to other companies which did not respond to our quantity and value (''Q&V'') questionnaire. *See Silicon Metal From The People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12378 (March 7, 2008) (''*Preliminary Results*''). We invited interested parties to submit comments on our *Preliminary Results*. We received a case brief from Petitioner on April 8, 2008 (''Petitioner Case Brief''). No other comments were submitted by any interested party. On June 12, 2008, we held public and closed hearings, and the transcripts for these hearings were placed on the record on June 19, 2008.

Scope of the Order

The product covered by the order is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight. The subject merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'') as a chemical product, but is commonly referred to as a metal. Semiconductor–grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The POR is June 1, 2006, through May 31, 2007.

Analysis of Comments Received

All issues raised in Petitioner's April 8, 2008 case brief are addressed in the *Silicon Metal from the People's Republic of China: Issues and Decision Memorandum for the Final Results in the 2006–2007 Administrative Review* from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated August 4, 2008, (''I&D Memo''), which is hereby adopted by this notice. A list of the issues raised, all of which are addressed in the I&D Memo, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (''CRU''), room 1117 of the Department of Commerce. In addition, a complete version of the I&D Memo can be accessed directly on the internet at http://trade.gov/ia. The paper copy and electronic version of the I&D Memo are identical in content.

Final Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to certain companies, as Jiangxi Gangyuan Silicon Industry (''Gangyuan''); MPM Silicones, LLC (''MPM''); GE Silicones Canada (''GE Silicones''); Global Minerals Corp. (''GMC''); Transtrading House Ltd. (''Transtrading''); Lorbec Metals Ltd. (''Lorbec''); Carbonsi Mettalurgical Inc. (''Carbonsi''); Crown All Corporation (''Crown All''); Ferro–Alliages& Mineraux Inc. (''Ferro–Alliages''); Chemical & Alloy Inc. (''C&A''); IMMECC Resources Inc. (''IMMECC''); and Bomet (Canada) Inc. (''Bomet''), each certified that they did not export silicon metal from China to the United States during the POR. *See Preliminary Results*, 73 FR 12378. Subsequent to the *Preliminary Results*, Petitioners again claimed that record evidence indicated that Ferro–Alliages may have transshipped silicon metal to the United States through Canada that originated in China.[1] *See* Petitioner Case Brief at 1–12. Petitioner requested that, given these allegations, the Department should investigate whether Ferro–Alliages accurately reported the country of origin of the silicon metal that it shipped to the United States during the POR. For these final results, however, we have determined not to further investigate alleged Ferro–Alliages exports of PRC–origin silicon metal, as CBP data indicate that no entries exist for PRC–origin silicon metal exported to the United States by Ferro–Alliages. In addition, as this is an administrative review, not a circumvention or scope inquiry, we find that this is not the proper proceeding to pursue Petitioner's claims.

Because there is no information on the record which indicates that Gangyuan; MPM; GE Silicones; GMC; Transtrading; Lorbec; Carbonsi; Crown All; Ferro–Alliages; C&A; IMMECC; and Bomet made sales to the United States of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review

[1] Petitioner first raised the issue of alleged transshipment by Ferro–Alliages in its November 13, 2007, submission to the Department. *See* Petitioner's November 13, 2007, submission, at page 1. The Department addressed these allegations in its Preliminary Results. *See Preliminary Results*, 73 FR at 12379.

of the antidumping duty order on silicon metal from the PRC for the period of June 1, 2006, through May 31, 2007. *See, e.g., Stainless Steel Sheet and Strip in Coils from Japan; Final Rescission of Antidumping Duty Administrative Review*, 71 FR 26041, 26043 (May 3, 2006).

In addition, in the *Preliminary Results*, the Department indicated that it was unable to directly serve Global Minerals (Canada), SeaView Trading, or Coldstone with its Q&V questionnaire. *See* Memorandum to the File from Kristina Horgan, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Proof of Non–Delivery to Global Minerals (Canada) and SeaView Trading,'' dated November 9, 2007; *see also* Memorandum to the File from Michael Quigley, International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Record of Mailings to Coldstone Metals Inc.,'' dated November 20, 2007 (''Coldstone Memo'').

In its April 8, 2008, case brief, Petitioners requested that the Department apply adverse facts available (''AFA'') to Coldstone for not responding to the Department's initial August 24, 2007 Q&V questionnaire. The Department finds that we cannot penalize Coldstone for not responding to the Department's second Q&V letter, as the Department was unable to inform the party of the nature of the deficiency on the record. *See* I&D Memo, at Comment 2. Therefore, the Department is rescinding the review with respect to Coldstone, Global Minerals (Canada) and SeaView Trading, in accordance with our practice. *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65083 (November 7, 2006).*Use of Facts Otherwise Available and the PRC–Wide Rate*

In the *Preliminary Results*, the Department found that Hunan Provincial Import & Export Group Co (PRC) (''Hunan Provincial''), Gather Hope Int'l Co., Ltd. (''Gather Hope''), and Alloychem Impex Corp. (''Alloychem'') ceased participating in the administrative review, as the companies did not respond to the Department's requests for Q&V information. As noted in the *Preliminary Results*, the Department found that Hunan Provincial, Gather Hope, and Alloychem did not establish their eligibility for separate rate status, and thus such entities are deemed part of the PRC–wide entity. As the Department found that the PRC–wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information, the Department assigned the PRC–wide entity a rate based on AFA. The Department did not receive comments prior to these final results regarding the Department's preliminary application of AFA to the PRC–wide entity.

Therefore, for these final results, the Department has not altered its decision from the *Preliminary Results* to apply total AFA to the PRC–wide entity accordance with sections 776(a)(2)(A) and (B) and section 776(b) of the Act, and has assigned an AFA rate of 139.49 percent. *See Preliminary Results* at 12381.

Final Results of Review

We determine that the following antidumping duty margin exists for the period June 1, 2006, through May 31, 2007:

SILICON METAL FROM THE PRC

PRC–Wide Entity[2]	139.49

[2] The PRC–Wide Entity includes Hunan Provincial, Gather Hope, and Alloychem.

Assessment Rates

The Department will instruct Customs Border Patrol (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 04, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18477 Filed 8–8–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Sixth Administrative Review of Honey from the People's Republic of China: Extension of Time Limit for the Preliminary Results

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

EFFECTIVE DATE: August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone-(202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2008, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of honey from the People's Republic of China (''PRC''), covering the period December 1, 2006—November 30, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008) (''*Initiation*''). On April 2, 2008, after receiving comments on U.S. Customs and Border Protection data, the Department selected the mandatory respondents for this review. From May

9, 2008 to July 11, 2008, the participating mandatory respondent responded to the Department's questionnaire and subsequent supplemental questionnaires. On June 10, 2008 the Department selected an additional mandatory respondent, which did not respond to the Department's initial antidumping duty questionnaire or the Department's second antidumping duty questionnaire. The preliminary results of this administrative review are currently due on September 2, 2008.

Extension of Time Limit for the Preliminary Results

The Department determines that completion of the preliminary results of this review within the statutory time period is not practicable, given the extraordinarily complicated nature of the proceeding. Although this administrative review covers one company, the Department requires more time to gather and analyze a significant amount of information pertaining to this company's corporate structure and ownership, sales practices, and manufacturing methods. Lastly, the Department requires additional time to analyze the questionnaire responses and to issue supplemental questionnaires. Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), we are extending the time period for issuing the preliminary results of review by 75 days until November 15, 2008. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: August 1, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–18480 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 071121729–81040–02]

Extension of the Award Period for Certain Native American Business Enterprise Centers

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is publishing this notice to allow for up to a twelve (12) month funded extension, on a non-competitive basis, of the overall award periods for those Native American Business Enterprise Centers (NABECs) identified in this notice. MBDA is taking this action to allow for continued program delivery by the incumbent NABECs operators while MBDA completes the competitive solicitation and award processes for the next three (3) year award period for these projects.

DATES: The award period and related funding, if approved by the Department of Commerce Grants Officer, will commence September 1, 2008 and will continue for a period not to exceed twelve (12) months.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Chief, Office of Business Development, Minority Business Development Agency, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Mr. Gonzalez may be reached by telephone at (202) 482–1940 and by e-mail at *egonzalez@mbda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11625, the NABEC Program provides standardized business assistance and development services directly to eligible Native American and minority-owned businesses. The NABEC Program is a key component of MBDA's overall business development assistance program and promotes the growth and competitiveness of minority business enterprises and further incorporates an entrepreneurial approach to the delivery of client services. This entrepreneurial strategy expands the reach and service delivery of the NABEC Program by requiring project operators to develop and to build upon strategic alliances with public and private sector partners as a means of serving eligible businesses within each NABEC applicable geographical service area.

This notice amends MBDA's prior **Federal Register** notice dated May 11, 2007 (72 FR 26783), to allow for up to a 12-month funded extension, on a non-competitive basis, of the overall award period for the following two NABECs: New Mexico NABEC (American Indian Chamber of Commerce); and the Oklahoma NABEC (Rural Enterprises of Oklahoma, Inc.). MBDA is taking this action to allow for continued program delivery by the incumbent NABEC operators while MBDA completes the competitive solicitation and award processes for the next 3-year award period for these projects.

The allowable award extensions and additional funding set forth herein will be made at the sole discretion of MBDA and the Department of Commerce (Department). In making such determinations, the following factors will be considered: (1) Whether the NABEC operator is currently performing at a ''Satisfactory'' (or better) program performance level at the time the Grants Officer approves the extension; (2) the availability of appropriated funds; and (3) MBDA and Department priorities. The project's performance rating will be evaluated through the standardized performance reports and assessments required under the NABEC Program.

In no event will MBDA or the Department of Commerce be responsible to cover any costs incurred outside of the current award period by the incumbent operators of the NABEC projects affected by this notice if these NABEC projects are delayed, suspended or cancelled because of other MBDA or Department priorities. Publication of this announcement does not oblige MBDA or the Department to award any extensions or to obligate any available funds for such purpose.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the February 11, 2008 **Federal Register** notice (73 FR 7696) are applicable to this notice.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: August 6, 2008.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. E8–18498 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Submission of Conservation Efforts To Make Listings Unnecessary Under the Endangered Species Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before October 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Marta Nammack, (301) 713–1401 or *marta.nammack@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (Services) announced a Policy for Evaluation of Conservation Efforts When Making Listing Decisions. (68 FR 15100; March 28, 2003). This final policy lists criteria that NMFS will use to evaluate conservation efforts by states and other non-Federal entities. A conservation agreement/plan and procedures for monitoring the agreement/plan's effectiveness is developed by the respondent, based on the respondent's understanding of how best to meet these criteria, and thus to assure the Services that: (1) The conservation effort will be implemented; and (2) the conservation effort will be effective. The Services take these efforts into account when making decisions on whether to list a species as threatened or endangered under the Endangered Species Act. The accepted plans are followed with annuals reports.

II. Method of Collection

NMFS does not require, but will accept, plans and reports electronically. NMFS has not developed a form to be used for submission of plans or reports. In the past, NMFS has made plans and annual reports from states available through the Internet and plans to continue this practice.

III. Data

OMB Number: 0648–0466.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and State, local or tribal governments.

Estimated Number of Respondents: 3.

Estimated Time per Response: 2,500 hours to complete each agreement or plan that has the intention of making listing unnecessary; 320 hours to conduct monitoring for successful agreements; and 80 hours to prepare a report for successful agreements.

Estimated Total Annual Burden Hours: 3,300.

Estimated Total Annual Cost to Public: $150.

IV. Request for Comments

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

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

Dated: August 6, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18451 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AX05

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11

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

ACTION: Supplemental Notice of Intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: On December 19, 2005, the Mid-Atlantic Fishery Management Council (Council), in cooperation with NMFS, announced its intent to prepare a supplemental environmental impact statement (SEIS) for Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP)(Amendment 11). Since then, the Council and NMFS have determined that the Amendment 11 document is an independent action and therefore will be handled as an EIS, rather than SEIS. The Council has chosen to consider management measures in this action in addition to limited access in the Atlantic mackerel (mackerel) fishery, including: The implementation of annual catch limits (ACLs) and accountability measures (AMs) for Atlantic mackerel and butterfish required under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA); an update of the description and identification of essential fish habitat (EFH) for all life stages of mackerel, *Loligo* squid (*Loligo*), *Illex* squid (*Illex*), and butterfish (including gear impacts on *Loligo* egg EFH); and possible limitations on at-sea processing of mackerel. For purposes of scoping, this supplemental NOI seeks comments on only the above listed new measures that may be included in Amendment 11. Additional scoping will take place via solicitation of public comment at Council meetings and related Council committee meetings as Amendment 11 is considered and developed.

DATES: Public comments on the supplemental NOI for Amendment 11 must be received on or before 5 p.m., local time, September 10, 2008.

ADDRESSES: Written comments on the supplementary notice of intent for Amendment 11 may be sent by any of the following methods:

- E-mail to the following address: *MSBAmendment11@noaa.gov*;

• Mail to Sustainable Fisheries Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Scoping Comments on Supplemental NOI for Amendment 11;'' or

• Fax to 978–281–9135. Mark the fax ''Scoping Comments on Supplemental NOI for Amendment 11.''

Copies of supporting documents used by the Council are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790, telephone 302–674–2331.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2005 (70 FR 10605), the Council published an NOI to prepare a SEIS to consider the impacts of alternatives for limiting access to the mackerel fishery. The Council subsequently conducted scoping meetings on the development of a limited access program, which the Council originally planned to include in Amendment 9 to the MSB FMP (Amendment 9). However, due to unforeseen delays in the development of Amendment 9, the Council notified the public on December 19, 2005 (70 FR 75114), that the mackerel limited access program would be considered in Amendment 11. The Council subsequently notified the public on February 27, 2007 (72 FR 8693), that it would begin the development of Amendment 11 and the associated SEIS simultaneously with the development of Amendment 10 to the MSB FMP.

Additional Issues Under Consideration

During the course of the development of Amendment 11, the Council has identified three additional issues that may be considered in this amendment, in addition to mackerel limited entry. The first issue is implementation of ACLs and accountability measures AMs for mackerel and butterfish. The MSRA requires that fishery management plans contain a mechanism for specifying ACLs such that overfishing does not occur in the fishery, including measures to ensure accountability (AMs). Examples of AMs include in-season closures or pay-back provisions in cases of overages. The second issue is an update of the description and identification of EFH for all life stages of mackerel, *Loligo*, *Illex*, and butterfish (including gear impacts on *Loligo* squid egg EFH). NMFS guidance requires that EFH assessments should be updated every 5 years. The MSB EFH assessment has not been generally updated since it was completed in 1999, though gear impact analyses were completed for Amendment 9 to the MSB FMP (73 FR 37382, July 1, 2008). Additionally, EFH for *Loligo* eggs was designated in Amendment 9, therefore, a gear impact analysis for *Loligo* egg EFH will also be included in Amendment 11. The third issue is possible limitations on at-sea processing of mackerel that may be considered to limit overcapitalization of the mackerel fishery; the Council may consider a cap on the amount of at-sea processing or a limitation on at-sea processor vessel size.

Request for Comments

The public will have the opportunity to comment on the measures and alternatives being considered by the Council for Amendment 11 through public meetings and public comment periods required by the National Environmental Policy Act, the MSRA, and the Administrative Procedure Act. To date, the location and/or timing of these meetings and comment periods has yet to be finalized, but appropriate notice of them will be published in the **Federal Register**.

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

Dated: August 6, 2008.

James P. Burgess,

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

[FR Doc. E8–18489 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ53

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

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

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by the Gulf of Maine Research Institute (GMRI), which would exempt Atlantic sea scallop (scallop) vessels from small dredge program gear restrictions, should be issued for public comment. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made.

DATES: Comments on GMRI's EFP application must be received on or before August 26, 2008.

ADDRESSES: Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *scallop.efp@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on small dredge EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on small dredge EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Cooperative Research Liaison, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: In response to the 2008 Atlantic Sea Scallop RSA Program request for proposals, NOAA's National Marine Fisheries Service received a proposal from GMRI entitled, ''An assessment of hanging ratio and mesh orientation of twine-tops on selectivity and bycatch in the general category scallop dredge fishery in scallop limited access areas.'' The grant approved by NOAA Grants on July 26, 2008, as NOAA Award No. NA08NMF4540667. GMRI proposes to determine if changes to the dredge twine-top configuration would affect the selectivity of a 10.5–ft general category scallop dredge.

Under this award, GMRI was awarded 70,565 lb of scallops from the Elephant Trunk Access Area (ETAA) and 33 days-at-sea (DAS), with the proceeds from sold scallops compensating participating vessel owners and defraying research costs. Small dredge program restrictions at 50 CFR 648.51(e) require a vessel enrolled in the small dredge program to fish with one dredge

no more than 10.5 ft in width. GMRI would like to contract a vessel enrolled in the small dredge program to harvest their set-aside scallop allocation. GMRI requests this vessel be authorized to fish two dredges (max combined width of 31 ft) to harvest the set-aside scallops, thereby requiring exemption from the small dredge program dredge size restrictions. GMRI claims that this exemption would allow the vessel to harvest the set-aside scallops more efficiently, thus reducing vessel operating expenses and increasing the portion of proceeds supporting the research project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: August 4, 2008.

James P. Burgess

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

[FR Doc. E8–18406 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB13

Small Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

ACTION: Notice; receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments and information.

SUMMARY: NMFS has received a request from Eglin Air Force Base (EAFB) for the take of marine mammals, by Level B harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations at EAFB, Florida. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Air Force to take, by Level B harassment, two species of cetaceans at EAFB beginning in October 2008. NMFS is also requesting comments on its intent to promulgate regulations in 2009 governing the take of marine mammals over a 5–year period incidental to the activities described herein. NMFS issued an IHA for these activities in 2005, 2006, and 2007. No activities have occurred to date.

DATES: Comments and information must be received no later than September 10, 2008.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XB13@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein and Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take of marine mammals by harassment. With respect to military readiness activities, the MMPA defines ''harassment'' as:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 13, 2008, NMFS received an application from EAFB requesting an IHA for the harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations and testing at Eglin Gulf Test and Training Range (EGTTR) at EAFB, Florida, in the northern Gulf of Mexico (GOM). NMFS issued an IHA for the same activity in 2005 (70 FR 51341, August 30, 2005), 2006 (71 FR 60693, October 16, 2006), and 2007 (72 FR 58290, October 15, 2007). Each of up to six missions per year would include up to 5 live detonations (up to 30 charges per year) of approximately 5–lb (2.3–kg) net explosive weight charges to occur in approximately 60–ft (18.3–m) deep water from one to three nm (1.9 to 5.6 km) off shore. Because this activity will

be a multi-year activity, NMFS also plans to develop proposed regulations for NEODS training operations at EAFB. No missions have occurred to date.

Specified Activities

The mission of NEODS is to train personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The NEODS proposes to utilize three areas within the EGTTR, consisting of approximately 86,000 mi^2 (222,739 km^2) within the GOM and the airspace above, for Mine Countermeasures (MCM) detonations, which involve mine-hunting and mine-clearance operations. The detonation of small, live explosive charges disables the function of the mines, which are inert for training purposes. The proposed training would occur approximately one to three nautical miles (nm) (1.9 to 5.6 km) offshore of Santa Rosa Island (SRI) six times annually, at varying times within the year.

Each of the six training classes would include one or two ''Live Demolition Days.'' During each set of Live Demolition Days, five inert mines would be placed in a compact area on the sea floor in approximately 60 ft (18.3 m) of water. Divers would locate the mines by hand-held sonars. The AN/PQS–2A acoustic locator has a sound pressure level (SPL) of 178.5 re 1 µPascal @ 1 meter and the Dukane Underwater Acoustic Locator has a SPL of 157–160.5 re 1 µPascal @ 1 meter. Because output from these sound sources would attenuate to below any current threshold for protected species within approximately 10–15 m, noise impacts are not anticipated and are not addressed further in this analysis.

Five charges packed with five lbs (2.3 kg) of C–4 explosive material will be set up adjacent to each of the mines. No more than five charges will be detonated over the 2–day period. Detonation times will begin no earlier than 2 hours after sunrise and end no later than 2 hours before dusk and charges utilized within the same hour period will have a maximum separation time of 20 minutes. Mine shapes and debris will be recovered and removed from the water when training is completed. A more detailed description of the work proposed is contained in the initial **Federal Register** notice (70 FR 51341, August 30, 2005) and application, which is available upon request (see **ADDRESSES**).

Military Readiness Activity

NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. According to the application, the Navy and the Marine Corps believe that the ability of Sailors and Marines to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

As described in the application, the Navy believes that an array of transnational, rogue, and subnational adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: shallow water; the surf zone; and the beach zone. The Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The NEODS mission in the GOM offshore of EAFB is considered a military readiness activity pursuant to the National Defense Authorization Act (NDAA)(Public Law 108–136).

Marine Mammals and Habitat Affected by the Activity

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and the West Indian manatee. While a few manatees may migrate from southern Florida to Louisiana in the summer, they primarily inhabit coastal and inshore waters and rarely venture offshore. Dwarf and pygmy sperm whales, while present in the Gulf of Mexico, are pelagic species and not usually found close to shore. NEODS missions are conducted one to three nm (5.6 km) from shore; therefore, impacts to manatees, dwarf, and pygmy sperm whales are not likely to occur because their potential for being found near the project site is remote and not discussed further in this analysis.

Cetacean abundance estimates for the project area are derived from GulfCet II aerial surveys conducted from 1996 to 1998 over a 70,470 km^2 area, including nearly the entire continental shelf region of the EGTTR, which extends approximately 9 nm (16.7 km) from shore. The two marine mammal species expected to be affected by these activities are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Descriptions of the biology and local distribution of these species can be found in the application (see **ADDRESSES** for availability); other sources such as Wursig *et al.* (2000), and the NMFS Stock Assessments, can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.

Atlantic Bottlenose Dolphins

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters and occur in the slope, shelf, and inshore waters of the GOM. According to the 2005 NOAA stock assessment report, bottlenose dolphins inhabiting water less than 20 m (66 ft)deep are divided into 36 separate inshore or coastal stocks while animals in water 20–200 m (66 to 656 ft) deep constitute 3 continental shelf stocks. These stock segments are based on a combination of geographical, ecological, and genetic research. However, because the data of structure of stocks is complex, coastal and continental shelf stocks may overlap. The exact structure of these stocks continues to be revised as research is completed. The proposed action would occur on the ocean floor at a depth of approximately 60 ft (18 m) and, therefore, has the potential to affect both the continental shelf and coastal stocks. Activities are not expected to affect the oceanic stock of bottlenose dolphins in the GOM because the activities would take place relatively close to shore.

Continental shelf stock assessments were estimated using data from vessel surveys conducted between 1998 and 2001 (at 20- to 200–m (66- to 656–ft) depths). The minimum population estimate for the northern GOM continental shelf stock of the Atlantic bottlenose dolphin is 20,414 (Waring *et al.*, 2005).

Distinct inshore stocks are provisionally identified in each of 33 areas of contiguous, enclosed or semi-enclosed bodies of water adjacent to the Gulf of Mexico (GOM) based on descriptions of relatively discrete dolphin ''communities'' in some of these areas (Waring *et al.*, 2005). A ''community includes resident dolphins that regularly share large portions of their ranges, exhibit similar distinct genetic profiles, and interact with each other to a much greater extent than with dolphins in adjacent waters (dolphins from different communities do interbreed).'' The most recent inshore stock assessment surveys were

conducted aerially in 1993. Two bodies of water north of the project area are thought to support distinct communities, the Pensacola Bay and the Choctawhatchee Bay. Population size estimates for most of the inshore stocks are greater than 8 years old and therefore the current population size for each stock is considered unknown. Previous abundance in Pensacola Bay and Choctawhatchee Bay was estimated as 33 and 242 animals, respectively.

Texas A&M University and NMFS conducted GulfCet II aerial surveys in an area including the EGTTR from 1996 to 1998. Density estimates were calculated using abundance data collected from the continental shelf area of the EGTTR. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic bottlenose dolphins within the project area is 0.810 individuals/km^2. A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km2.

Atlantic Spotted Dolphins

Atlantic spotted dolphins are endemic to the tropical and warm temperate waters of the Atlantic Ocean and can be found from the latitude of Cape May, New Jersey south along mainland shores to Venezuela, including the GOM and Lesser Antilles. In the GOM, Atlantic spotted dolphins occur primarily in continental shelf waters 10 to 200 m (33 to 656 ft) deep out to continental slope waters less than 500 m (1640.4 ft) deep. One recent study presents strong genetic support for differentiation between GOM and western North Atlantic management stocks, but the Gulf of Mexico stock has not yet been further subdivided. Although Atlantic spotted dolphins do not normally inhabit nearshore waters, they are included in the analysis to ensure conservative mitigation measures are applied.

Abundance was estimated in the most recent assessment of the northern GOM stock of the Atlantic spotted dolphin using combined data from continental shelf surveys (20 to 200 m (66 to 656 ft) deep) and oceanic surveys (200 m (656 ft)) to offshore extent of U.S. Exclusive Economic Zone) conducted from 1996 to 2001. The minimum population estimate for the northern GOM is 24,752 Atlantic spotted dolphins (Waring *et al.*, 2005).

Density estimates for the Atlantic spotted dolphin within the EGTTR were calculated using abundance data collected during the GulfCet II aerial surveys. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic spotted dolphins within the project area is 0.677 individuals/km2. A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km^2.

Potential Effects of Activities on Marine Mammals

The primary potential impact to the Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the proposed detonations is Level B harassment from noise and energy from explosions. In the absence of any mitigation or monitoring measures, there is a very small chance that a marine mammal could be injured or killed when exposed to the energy generated from an explosive force on the sea floor. However, NMFS believes the proposed mitigation measures will preclude this possibility in the case of this particular activity. Analysis of NEODS noise impacts to cetaceans was based on criteria and thresholds initially presented in U.S. Navy Environmental Impact Statements for ship shock trials of the SEAWOLF submarine and the WINSTON CHURCHILL vessel and subsequently adopted by NMFS.

Non-lethal injurious impacts (Level A Harassment) are defined in EAFB's application and this proposed IHA as tympanic membrane (TM) rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 μPa^2 s. TM rupture is well-correlated with permanent hearing impairment (Ketten, 1998) and indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold. As outlined in the application, the zone of influence (ZOI) (farthest distance from the source at which an animal is exposed to the EFD level referred to) for the Level A Harassment threshold is 52 m (172 ft).

Level B (non-injurious) Harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 μPa^2 s maximum EFD level in any 1/3–octave band above 100 Hz for toothed whales (e.g., dolphins). The ZOI for this threshold is 230 m (754 ft). A second criterion, 23 psi, has recently been established by NMFS to provide a more conservative range for TTS when the explosive or animal approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The ZOI for 23 psi is 222 m (728 ft) (NMFS will apply the more conservative of these two).

Level B Harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of time. Threshold criteria for this particular type of harassment are currently still being considered. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 μPa^2 s. Due, however, to the infrequency of the detonations, the potential variability in target locations, and the continuous movement of marine mammals off the northern Gulf, NMFS believes that behavioral modification from repeated exposures to the same animal is highly unlikely.

Numbers of Marine Mammals Estimated to be Harassed

Estimates of the potential number of Atlantic bottlenose dolphins and Atlantic spotted dolphins to be harassed by the training were calculated using the number of distinct firing or test events (maximum 30 per year), the ZOI for noise exposure, and the density of animals that potentially occur in the ZOI. The take estimates provided here do not include mitigation measures, which are expected to further minimize impacts to protected species and make injury or death highly unlikely.

Using a conservative density estimate for each species of dolphins, the ZOI of charge employed and the total number of events per year, an annual estimate of the potential number of animals exposed to noise was analyzed. Without any mitigation, up to one cetacean is estimated to be within the Level A 205 dB noise ZOI. Because in-place mitigations would clear the area of any marine mammals before detonation, it is anticipated that no marine mammal takes would result in the form of mortality or injury (Level A harassment). The estimated number of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to the Level A harassment threshold (205 dB re 1 μPa^2 s), are less than one (0.21 and 0.18, respectively) annually.

For Level B Harassment, two separate criteria were established, one expressed in dB re 1 μPa^2 s maximum EFD level in any 1/3–octave band above 100 Hz, and one expressed in psi. The estimated

numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to 182 dB are 3.96 and 3.30 individuals during the summer and 4.02 and 3.36 individuals during the winter, respectively. The estimated numbers potentially taken through exposure to 23 psi are also 4 and 3 individuals, respectively.

Possible Effects of Activities on Marine Mammal Habitat

The Air Force anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins or Atlantic spotted dolphins in the EGTTR. The primary source of marine mammal habitat impact resulting from the NEODS missions is noise, which is intermittent (maximum 30 times per year) and of limited duration. The effects of debris (which will be recovered following test activities), ordnance, fuel, and chemical residues were analyzed in the NEODS Biological Assessment and the Air Force concluded that marine mammal habitat would not be affected. NMFS concurs with this determination in the Environmental Assessment (EA).

Proposed Mitigation and Monitoring

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the ZOI. A trained, NMFS-approved observerwill be staged from the highest point possible on a support ship and have proper lines of communication to the Officer in Tactical Command. The survey area will be 460 m (1509 ft) in every direction from the target, which is twice the radius of the ZOI for Level B Harassment (230 m (755 ft)). To ensure visibility of marine mammals to observers, NEODS missions will be delayed if whitecaps cover more than 50 percent of the surface or if the waves are greater than 0.91 m (3 feet) (Beaufort Sea State 4).

Pre-mission monitoring will be used to evaluate the test site for environmental suitability of the mission. Visual surveys will be conducted two hours and one hour continuing to 5 minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals and large schools of fish, and that the weather is adequate to support visual surveys. The observer will plot and record sightings, bearing, and time for all marine mammals detected, which would allow the observer to determine if the animal is likely to enter the test area during detonation. If a marine mammal appears likely to enter the test area during detonation, if large schools of fish are present, or if the weather is inadequate to support monitoring, the observer will declare the range fouled and the tactical officer will implement a hold until monitoring indicates that the test area is and will remain clear of detectable marine mammals.

Monitoring of the test area will continue throughout the mission until the last detonation is complete. The mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI (230 m (755 ft)). The delay would continue until the animal that caused the postponement is confirmed to be outside the ZOI (visually observed swimming out of the range).

(2) Any marine mammal is detected in the ZOI and subsequently is not seen again within 15 minutes. The mission would not continue until the animal is moving away from the mission area and/or the last verified location is outside of the ZOI.

(3) Large schools of fish are observed in the water within of the ZOI. The delay would continue until large schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, mitigation measures would continue while operations personnel attempted to recognize and solve the problem (detonate the charge).

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least two hours after the last detonation. The monitoring team would document and report to the appropriate marine animal stranding network any marine mammals killed or injured during the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the Officer in Tactical Command.

Reporting

The Air Force will notify NMFS 2 weeks prior to initiation of each training session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, NMFS, within 24 hours. A summary of mission observations and test results, including dates and times of detonations as well as pre- and post-mission monitoring observations, will be submitted to the Southeast Regional Office (NMFS) and to the Division of Permits, Conservation, and Education, Office of Protected Resources (NMFS) within 90 days after the completion of the last training session.

Endangered Species Act

In a Biological Opinion issued on October 25, 2004, NMFS concluded that the NEODS training missions and their associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for those species. NMFS has issued an incidental take statement (ITS) for sea turtles pursuant to section 7 of the Endangered Species Act. The ITS contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. This proposed IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

National Environmental Policy Act

In 2005, NMFS prepared an Environmental Assessment (EA) on the Issuance of Authorizations to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida, and subsequently issued a Finding of No Significant Impact (FONSI). Therefore, preparation of an EIS on this action is not required by section 102(2) of the NEPA or its implementing regulations. In 2007, NMFS prepared a supplemental EA (SEA) to address new available information regarding the effects of the described activities to Essential Fish Habitat and other operations EAFB is conducting that may have cumulative impacts to the physical and biological environment. NMFS issued a FONSI for the SEA regarding NEODS activities. The analysis in the EA and SEA concluded that issuance of an IHA would not significantly affect the quality of the human environment. This proposed IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

Preliminary Conclusions

NMFS proposes to issue an IHA for a one year period to the EAFB for the NEODS training missions to take place

within EGTTR, Florida. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of the NEODS training, which entails up to six missions per year, including up to five live detonations per mission of approximately 5–lb (2.3 kg) net explosive weight charges to occur in approximately 60–foot (18 m) deep water from one to three nm off shore, may result in the Level B harassment of a few Atlantic bottlenose dolphins and Atlantic spotted dolphins and; therefore, would have a negligible impact on these marine mammal species and stocks. Dwarf and pygmy sperm whales and manatees are unlikely to be found in the area and, therefore, are unlikely to be affected. While behavioral modifications may be made by Atlantic bottlenose dolphins and Atlantic spotted dolphins to avoid the resultant acoustic stimuli, there is virtually no possibility of injury or mortality when the potential density of dolphins in the area and extent of mitigation and monitoring are taken into consideration. The effects of the NEODS training are expected to be limited to short-term and localized TTS-related behavioral changes. NMFS has also preliminarily determined that the anticipated takes will have a negligible impact on the affected species. No subsistence users are located within the geographic area of this proposed project.

Due to the infrequency and localized nature of these activities, the estimated number of marine mammals, relative to the population size, potentially taken by harassment is small (less than 0.0002 percent for each species, and perhaps 1–2 percent of an inshore stock of bottlenose dolphin if one of them were harassed). In addition, no take by injury and/or death is anticipated. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the NEODS test sites.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). 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: August 5, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–18484 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ57

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 1.2 ''Past Climate Variability and Change in the Arctic and at High Latitudes''

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce a 45-day public comment period for the draft report titled, U.S. Climate Change Science Program Synthesis and Assessment Product 1.2 ''Past Climate Variability and Change in the Arctic and at High Latitudes.''This draft report is being released solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by NOAA. It does not represent and should not be construed to represent any Agency policy or determination. After consideration of comments received on the draft report, a revised version along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by September 25, 2008.

ADDRESSES: The draft Synthesis and Assessment Product: 1.2 is posted on the CCSP Web site at: *http://www.climatescience.gov/Library/sap/sap1–2/default.php*
Detailed instructions for making comments on this draft report are provided on the link above. Comments must be prepared in accordance to these instructions and must be submitted to: *1.2–clivar@climatescience.gov*

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that promote climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues.

Dated: August 1, 2008.

William J. Brennan,

Assistant Secretary of Commerce for Oceans and Atmosphere, and Director, Climate Change Science Program.

[FR Doc. E8–18405 Filed 8–8–08; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–86]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–86 with attached transmittal, and policy justification.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

JUL 24 2008

In reply refer to:
USP009626-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-86, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $206 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-86

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 3 million**
Other	**$203 million**
TOTAL	**$206 million**

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: MDE: 160 M2 50 cal Machine Guns. Non-MDE: 160 M1117 Armored Security Vehicles (ASVs), 4 Heavy Duty Recovery Trucks, 160 Harris Vehicular Radio Systems, 144 MK-19s Mod III 40mm Grenade Machine Guns with Bracket, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.**

(iv) **Military Department: Army (XXB)**

(v) **Prior Related Cases, if any: none.**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none.**

(viii) **Date Report Delivered to Congress:** JUL 2 4 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Iraq –Armored Security Vehicles

The Government of Iraq has requested a possible sale of 160 M2 50 cal Machine Guns, 160 M1117 Armored Security Vehicles (ASVs), 4 Heavy Duty Recovery Trucks, 160 Harris Vehicular Radio Systems, 144 MK-19 Mod III 40mm Grenade Machine Guns with Bracket, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $206 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the U.S.

The proposed sale of Armored Security Vehicles will enhance the ability of the Iraqi Police to sustain themselves in their efforts to bring stability to Iraq and to prevent overflow of unrest into neighboring countries.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The contractors are unknown as this time. There are no known offset agreements proposed in connection with this potential sale.

With the volume and wide range of items and equipment in this proposed sale, levels of U.S. Government and Contractor technical assistance will be required but cannot be fully defined at this time. The use of existing deployed U.S. military personnel will be maximized.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–18255 Filed 8–8–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 08–73]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 08–73 with attached transmittal, and policy justification.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

JUL 25 2008

In reply refer to:
USP007971-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-73, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $1.5 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-73

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .504 billion
Other	$ .996 billion
TOTAL	$1.500 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 6 C-130J-30 United States Air Force baseline aircraft and equipment, 24 Rolls Royce AE 2100D3 engines, 4 Rolls Royce AE 2100D3 spare engines, 6 AAR-47 Missile Warning Systems, 2 spare AAR-47 Missile Warning Systems, 6 AN/ALE-47 Countermeasures Dispensing Systems, and 2 spare AN/ALE-47 Countermeasures Dispensing Systems. Also included spare and repair parts, configuration updates, integration studies, support equipment, publications and technical documentation, technical services, personnel training and training equipment, foreign liaison office support, U.S. Government and contractor engineering and logistics personnel services, construction, and other related elements of logistics support.**

(iv) **Military Department: Air Force (SAB)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached.**

(viii) **Date Report Delivered to Congress:** JUL 2 5 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Iraq - C-130J-30 Aircraft

The Government of Iraq has requested a possible sale of 6 C-130J-30 United States Air Force baseline aircraft and equipment, 24 Rolls Royce AE 2100D3 engines, 4 Rolls Royce AE 2100D3 spare engines, 6 AAR-47 Missile Warning Systems, 2 spare AAR-47 Missile Warning Systems, 6 AN/ALE-47 Countermeasures Dispensing Systems, 2 spare AN/ALE-47 Countermeasures Dispensing Systems. Also included spare and repair parts, configuration updates, integration studies, support equipment, publications and technical documentation, technical services, personnel training and training equipment, foreign liaison office support, U.S. Government and contractor engineering and logistics personnel services, construction, and other related elements of logistics support. The estimated cost is $1.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the U.S., as well as offering hope for a more stable and peaceful Middle East.

The Iraqi Air Force intends to use the C-130J aircraft for intra-theater support for its troops. Additionally, the aircraft will be used to provide humanitarian relief operations in various locations. Purchase of new transport aircraft will provide Iraq with the ability to operate seamlessly with U.S., NATO and coalition forces engaged in all types of operations and missions.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin Aeronautics Company in Fort Worth, Texas and Rolls-Royce Corporation in Indianapolis, Indiana. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require participation of up to ten U.S. Government and ten contractor representatives to participate in annual technical and program management reviews, for two-week intervals.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-73

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The C-130 Hercules aircraft performs primarily the tactical portion of the airlift mission. The aircraft is capable of operating from rough, dirt strips and is the prime transport for air dropping troops and equipment into hostile areas. The C-130 operates throughout the U.S. Air Force, serving with Air Mobility Command, Air Force Special Operations Command, Air Combat Command, U.S. Air Forces in Europe, Pacific Air Forces, Air National Guard, and the Air Force Reserve Command, fulfilling a wide range of operational missions in both peace and war. The C-130J improvements over the C-130E include improved maximum speed, climb time, cruising altitude and range. The C-130J-30 has 55 feet of cargo compartment length - an additional 15 feet over the original "short" aircraft.

2. The AN/ALE-47 Countermeasures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board early warning and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

3. The AN/AAR-47 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, normally four, is mounted on the aircraft exterior to provide omni-directional

protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive built-in test circuitry. The control indicator displays the incoming direction of the threat, so that the pilot can take appropriate action. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified. Overall system classification is SECRET due to data that can be gleaned about vulnerabilities associated with the photomultiplier tube and false alarm rate. These vulnerabilities will be apparent to any user of the system. There will be no additional release of classified information beyond what has already been approved for release.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–18256 Filed 8–8–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. paragraph 552b, as amended), and 41 CFR paragraph 102–3.150, the Department of Defense announces the following Federal Advisory Committee meetings of the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee.

DATES: September 3, 2008 (0830–1700) and September 4, 2008 (0830–1700).

ADDRESSES: Aboard the National Airborne Command Center and at U.S. Strategic Command Headquarters Conference Room, Offutt AFB, NB.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

SUPPLEMENTARY INFORMATION: *Purposes of the Meetings:* To provide an overview of Nuclear Command and Control System capabilities, NCCS capabilities, including airborne and Integrated Tactical Warning/Attack Assessment facilities, equipment and communications.

Time	Topic	Presenter
	Agenda: Sep 3, 2008: Offutt AFB/HQ USSTRATCOM—Force Execution.	
TBD	Depart Andrews AFB.	
(Airborne)	NAOC Capabilities Brief	NAOC Crew.
(Airborne)	NAOC Roadmap	Joint Staff/USAF.
(Airborne)	Nuclear Forces Connectivity	OASD (NII)/DISA.
	(DC2N concept, Thin-line funding and projected capabilities)	
(Airborne)	Oversight of NCCS assets (e.g., DC2N, E–4, E–6B)	OASD (NII).
11 a.m.	Land at Offutt AFB.	
11:30 a.m.	Lunch	Club.
1 p.m.	Tour GOC, Air Room	STRATCOM.
2 p.m.	Briefing on OPLAN 8010 GT08	USSTRATCOM.
3 p.m.	DOD Nuclear Exercise Results	JS/STRATCOM.
4 p.m.	Exec Session.	
5 p.m.	Adjourn.	
	Sep 4, 2008: Offutt AFB/HQ USSTRATCOM—Force Execution	
8 a.m.	Tour TACAMO, get capabilities brief	TACAMO Crew.
9 a.m.	NATO NC2 Capabilities & Procedures	EUCOM.
9:30 a.m.	STRATCOM Survivability Assessment/EMP	Mr. Andy Metzger.
	[special compartmented briefing]	
10:30 a.m.	Integrated Tactical Warning/Attack Assessment	AFSPC.

Time	Topic	Presenter
	(Modernization Plans, C2 Plans, issues, capabilities gaps)	
11:30 a.m.	Communication Satellite Transition Plans	Air Staff.
12 p.m.	Lunch.	
1:30 p.m. (abt)	Depart Offutt for Andrews AFB on NAOC.	
(Airborne)	Nuclear Technical Performance Criteria (NTPC)	J Staff by VTC.
(Airborne)	National Military Command System	J Staff by VTC.
(Airborne)	POLO Hat Program (results/trends)	J Staff by VTC.
(Airborne)	Executive Session.	
5:30 p.m.	Arrive at Andrews AFB.	

Pursuant to 5 U.S.C. paragraph 552b, as amended, and 41 CFR paragraph 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Director, U.S. Nuclear Command and Control System Support Staff, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. paragraph 552b(c)(1).

Pursuant to 41 CFR paragraphs 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements at any time to the Nuclear Command and Control System Federal Advisory Committee about its mission and functions. All written statements shall be submitted to the Designated Federal Officer for the Nuclear Command and Control System Federal Advisory Committee. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Committee until its next meeting. All submissions provided before that date will be presented to the committee members before the meeting that is subject of this notice. Contact information for the Designated Federal Officer is listed below.

Committee's Designated Federal Officer: Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041. *William.jones@nss.pentagon.mil*.

Dated: August 6, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–18598 Filed 8–7–08; 4:15 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting of the Defense Health Board (DHB) is announced:

DATES: September 4, 2008 (8 a.m.–4:15 p.m.) (Open Session). September 5, 2008 (8:30 a.m.–3:30 p.m.) (Open Session).

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, EXT. 1228, Fax: (703) 681–3317, *roger.gibson@ha.osd.mil*.

SUPPLEMENTARY INFORMATION: Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*. The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by August 21, 2008. Written statements may be mailed to the above address, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

Purpose of the Meeting: The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda: On September 4, 2008 during the morning session, the Board will receive updates on the activities from Defense Health Board subcommittees: Trauma and Injury/Combat Casualty Care, Traumatic Brain Injury External Advisory, and the Traumatic Brain Injury Family Care Giver's Panel. The Board will discuss plans for identifying best practices in health care delivery in response to the recommendations outlined in the Board's Task Force for the Future of Military Healthcare report. The Board will also receive presentations on the basics of the TRICARE Health Plan and address issues of Environmental Risk Assessments in Operational Settings. The Vaccine Safety and Effectiveness Workgroup and the Biowarfare Countermeasures Subcommittee will provide updates on their activities. The Board will conduct an administrative session on the afternoon of September 4, 2008.

On September 5, 2008, the Board will discuss Amputee Care Sustainment, the DoD's plan for a Joint Pathology Center, and the activities of the Deployment Health Research Center. Questions will be presented to the Board on Lyme Disease Therapy and Applied Behavior Analysis (ABA) treatment for Autism. The meeting will conclude with open discussion and an awards ceremony.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 80 a.m. to 4:15 p.m. on September 4, 2008 and from 8:30 a.m. to 3:30 p.m. on September 5, 2008 is open to the public. Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two

type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer at the address detailed above at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: August 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–18599 Filed 8–7–08; 4:15 pm]

BILLING CODE 5001–06–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 September 10, 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: August 5, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Federal Family Education Loan (FFEL) School Letter.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 500.

Burden Hours: 125.

Abstract: On March 4, 2008, a letter was sent via e-mail to 4,155 financial aid administrators at institutions that participate in the Federal Family Educational Loan Program. The purpose of the letter is to inform the financial aid administrators that the Department of Education is monitoring the current uncertainty in the credit markets and the impact of that uncertainty on student loan programs. The letter invites the financial aid administrator to provide the Department with any information he or she has related to any lender that plans to reduce, suspend, or discontinue making student loans. The letter requests this information for both federal and non-federal student loans. The Department uses the information received from the financial aid administrators to prepare an analysis and summary for presentation to the Secretary. The Secretary continues to use the information to make her decisions related to ensuring the continued availability of educational loans for students and their families.

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 3657. 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. E8–18431 Filed 8–8–08; 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 September 10, 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: August 5, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: 2009 National Assessment of Educational Progress, Wave 3.

Frequency: One time

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 48,447.

Burden Hours: 15,829.

Abstract: Wave III of the National Assessment of Educational Progress contains student questionnaires at grades 4 and 8, as well as extended student questionnaires at grades 4, 8 and 12. It contains operational and pilot assessments to assess student's educational progress in reading, mathematics, science, and social studies at Grades 4, 8, and 12. Operational assessments in reading, mathematics, and science will be administered in grades 4, 8 and 12. Pilot assessments for civics, U.S. history, and geography will be administered in grades 4, 8 and 12. Pilot assessments will be administered in reading and mathematics in grades 4 and 8. A High School Transcript Study is also being conducted on students in Grade 12 for a subsample of the schools included in the sample, which is designed to examine the relationship between assessment scores and course taking patterns. School personnel who are most knowledgeable about students who are identified as being disabled or as English Language Learners will also be asked to complete the questionnaire.

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 3779. 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. E8–18433 Filed 8–8–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 4, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* P–2187–036.

c. *Date Filed:* July 1, 2008.

d. *Applicant:* Xcel Energy.

e. *Name of Project:* Georgetown Project.

f. *Location:* The project is located on South Clear Creek in Clear Creek County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Randy Rhodes, Senior Water Resources Analyst, Xcel Energy, 4653 Table Mountain Drive, Golden, CO 80403, (702) 497–2123.

i. *FERC Contact:* Any questions on this notice should be addressed to Emily Pugliese at (202) 502–6608, or by e-mail: *emily.pugliese@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 5, 2008.

k. *Description of Request:* Xcel Energy requests Commission authorization to convey two easements, in a joint conveyance, to Clear Creek County and the City of Black Hawk, Colorado. One easement would be used to convey spillway flows from Green Lake through a natural channel across project lands. The other easement would be used to convey releases from Green Lake to South Clear Creek.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's 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 (p-2187) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 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. *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.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2187–004). 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *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.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18377 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–150]

Alabama Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

August 5, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 349–150.

c. *Dated Filed:* June 5, 2008.

d. *Submitted by:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric.

f. *Location:* On the Tallapoosa River, in Tallapoosa, Coosa, and Elmore counties. The project does not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Mr. Jerry L. Stewart, Senior Vice President, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291. Tel. (205) 257–6227.

i. *FERC Contact:* Lee Emery at (202) 502–8379 or e-mail at *lee.emery@ferc.gov.*

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Alabama Power Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Alabama Power Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Martin Dam Hydroelectric Project) and number (P–349–150), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 3, 2008.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, September 11, 2008.
Time: 9 a.m. to 12 noon (CST).
Location: Central Alabama Community College, Betty Carol Graham Center at Alexander City Campus, 1675 Cherokee Road, Alexander City, AL 35010.
Phone: (205) 257–2211.

Evening Scoping Meeting

Date: Thursday, September 11, 2008.
Time: 6 p.m. to 8 p.m. (CST).
Location: Central Alabama Community College, Betty Carol Graham Center at Alexander City Campus, 1675 Cherokee Road, Alexander City, AL 35010.
Phone: (205) 257–2211.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the project on Wednesday, September 10, 2008, starting at 9 a.m. (CST). All participants should meet at the parking lot for the Martin Dam powerhouse, located at 675 Overlook Drive, Dadeville, AL 36853. All participants are responsible for their own transportation to the powerhouse site. Anyone with questions about the site visit should contact Viki Pate, Alabama Power Company at (205) 257–2211 on or before September 3, 2008.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18471 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

P–13174–000]

Davis Hydro, LLC.; Notice of Application for Preliminary Permit Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 4, 2008.

On April 16, 2008, Davis Hydro LLC. filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of Boca Power Project. The proposed project would be located on the Little Truckee River in Nevada County, California. The existing facilities are owned and operated by the Bureau of Reclamation.

The proposed project using the existing Bureau of Reclamation Boca Power Project would consist of: (1) A proposed approximately eight-foot-long 50-inch diameter penstock, (2) a proposed powerhouse, containing one generating unit with an installed capacity of 1.125 megawatts, (3) a proposed 2,000-foot-long, 12 kilovolt transmission line, and (4) appurtenant facilities. The proposed project would have an average annual generation of 5 gigawatt-hours and be sold to a local utility.

Applicant Contact: Richard D. Ely, Principal, Davis Hydro LLC., 27264 Meadowbrook Drive, Davis, California 95618, (530) 753–8864, *Dick@davishydro.com*.

FERC Contact: Jake Tung, (202) 502–8757.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13177) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18376 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13149–000]

FFP Ohio River 1, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 1, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 10 and Ohio River 1 Projects, to be located on the Ohio River in Pulaski County, Illinois and Ballard County, Kentucky.

The proposed Ohio River 1 Project consists of: (1) 3,180 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 63.6 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 1, LLC, project would have an average annual generation of 278.57 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 1, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13149) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18464 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13156–000; Project No. 13157–000]

FFP Ohio River 10, LLC; FFP Ohio River 11, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 10, LLC and FFP Ohio River 11, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 10 and Ohio River 11 Projects, to be located on the Ohio River in Floyd County, Indiana and Jefferson County, Kentucky.

The proposed Ohio River 10 Project consists of: (1) 1,920 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 38.4 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 10, LLC, project would have an average annual generation of 168.19 gigawatt-hours and be sold to a local utility.

The proposed Ohio River 11 Project consists of: (1) 1,740 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 34.8 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 10, LLC, project would have an average annual generation of 236.52 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 10, LLC and FFP Ohio River 11, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13156 or P–13157) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18469 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13158–000]

FFP Ohio River 12, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 12, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 12 and Ohio River 8 Projects, to be located on the Ohio River in Clark County, Indiana and Jefferson County, Kentucky.

The proposed Ohio River 12 Project consists of: (1) 2,700 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 54 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 12, LLC, project would have an average annual generation of 236.52 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 12, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60

days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13158) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18470 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13150–000]

FFP Ohio River 2, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 2, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 10 and Ohio River 2 Projects, to be located on the Ohio River in Massac County, Illinois and McCracken County, Kentucky.

The proposed Ohio River 2 Project consists of: (1) 2,460 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 49.2 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 2, LLC, project would have an average annual generation of 215.50 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 2, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13150) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18465 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13153–000]

FFP Ohio River 7, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 7, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 10 and Ohio River 7 Projects, to be located on the Ohio River in Perry and Spencer Counties, Indiana and Hancock County, Kentucky.

The proposed Ohio River 7 Project consists of: (1) 2,400 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 48 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 7, LLC, project would have an average annual generation of 210.40 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 7, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13153) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18466 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13154–000]

FFP Ohio River 8, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 8, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 10 and Ohio River 8 Projects, to be located on the Ohio River in Perry County, Indiana and Hancock County, Kentucky.

The proposed Ohio River 8 Project consists of: (1) 1,650 proposed 20

kilowatt Free Flow generating units having a total installed capacity of 33 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 8, LLC, project would have an average annual generation of 144.54 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 8, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13154) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18467 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13155–000]

FFP Ohio River 9, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 25, 2008, FFP Ohio River 9, LLC each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ohio River 9 and Ohio River 8 Projects, to be located on the Ohio River in Perry County, Indiana and Hancock and Breckinridge Counties, Kentucky.

The proposed Ohio River 9 Project consists of: (1) 2,280 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 45.6 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Ohio River 9, LLC, project would have an average annual generation of 199.73 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Dan Irvin, FFP Ohio River 9, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13155) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18468 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12538–002]

Oologah Lake Dam Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 4, 2008.

On March 3, 2008, Oologah Lake Dam Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Oologah Lake Dam Hydroelectric Project, which would be located near the town of Oologah on the Verdigris River, in Rogers County, Oklahoma, on an existing dam owned and operated by the U.S. Army Corps of Engineers. The proposed project would utilize federal lands.

The proposed project would use the U.S. Army Corps of Engineers' Oologah Lake Dam and would consist of: (1) A proposed intake structure; (2) a proposed 200-foot-long, 19-foot-diameter steel penstock; (3) a proposed powerhouse containing two generating units having a total installed capacity of 25.7 MW; (4) a proposed 2-mile-long, 46-kV transmission line; and (5) appurtenant facilities. The project would have an annual generation of 71.5 gigawatt-hours which would be sold to a local utility.

Applicant Contact: Mr. Brent Smith, Chief Operating Officer, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442; phone: (208) 745–0834. FERC Contact: Tom Papsidero, 202–502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's

Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12538) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18379 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13092–000]

Rhode Island Energy Group, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On December 31, 2007, Rhode Island Energy Group, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Sakonnet River Project, to be located on the Sakonnet River in Newport County, Rhode Island.

The proposed Sakonnet River Project consists of: (1) A proposed shrouded tidal turbin generating unit having an installed capacity of 500 kilowatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Rhode Island Energy Group, LLC, project would have an average annual generation of 2 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. John J. Callahan, Rhode Island Energy Group, LLC, P.O. Box 130, Portsmouth, RI 02871, phone (401) 683–0031.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13092) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18462 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13011–000; Project No. 13178–000]

Shelbyville Hydro, LLC; Prairie Power, Inc.; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On September 7, 2007 and April 17, 2008, Shelbyville Hydro, LLC and Prairie Power, Inc. each filed a competing application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Lake Shelbyville Projects, to be located on the Kaskaskia River in Shelby County, Illinois. The Lake Shelbyville Dam is owned by the U.S. Army Corps of Engineers.

Shelbyville Hydro, LLC's proposed project consists of: (1) A propose intake structure, (2) a proposed 189-foot-long, 108-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of 4 megawatts, (4) a proposed 1-mile-long, 12.5 kilovolt transmission line, and (5) appurtenant facilities. The proposed project would have an average annual generation of 13 gigawatt-hours and be sold to a local utility.

Prairie Power, Inc.'s proposed project consists of: (1) A propose intake structure, (2) a proposed 332-foot-long, 12.25-foot-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of 8 megawatts, (4) a proposed 800-foot-long, 12.47 kilovolt transmission line, and (5) appurtenant facilities. The proposed project would have an average annual generation of 27.8 gigawatt-hours and be sold to a local utility.

Applicants Contact: Mr. Brent L. Smith, Shelbyville Hydro, LLC, P.O. Box 535, Rigby, ID 83442, phone (208) 745–0834 and Mr. John N. Dalton, Prairie Power, Inc. P.O. Box 610, Jacksonville, IL 62651–0610, phone (217) 245–6161.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13011 or P–13178) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18472 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13140–000]

Tidewalker Associates; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

August 5, 2008.

On March 11, 2008, Tidewalker Associates each filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Quoddy Roads Project, to be located on Lubec Narrows in Washington County, Maine.

The proposed Quoddy Roads Project consists of: (1) 179 proposed 210

kilowatt sea-current generating units having a total installed capacity of 37.95 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Tidewalker Associates, project would have an average annual generation of 82.34 gigawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Norman Laberge, Tidewalker Associates, 46 Place Cove Road, Trescott, ME, phone (207) 733–5513.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13140) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18463 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 31, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–67–000.

Applicants: LS Power Development, LLC, Luminus Management, LLC.

Description: Supplemental Information for the 203 Application of LS Power Development, LLC and Luminus Management, LLC.

Filed Date: 07/30/2008.

Accession Number: 20080730–5031.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: EC08–87–000.

Applicants: Entegra Power Group LLC, Gila River Power, L.P., Union Power Partners, L.P., Harbinger Capital Partners Master Fund I, Harbinger Capital Partners Special Situa.

Description: Harbinger Capital Partners Master Fund I, Ltd., et al. Schedule 13G Filing.

Filed Date: 07/29/2008.

Accession Number: 20080729–5022.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–83–000.

Applicants: Project Orange Associates, LLC.

Description: Self Certification Notice of Exempt Wholesale Generator Status of Project Orange Associates, LLC.

Filed Date: 07/29/2008.

Accession Number: 20080729–5003.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: EG08–84–000.

Applicants: Smoky Hills Wind Project II, LLC.

Description: Self Certification Notice of EWG.

Filed Date: 07/30/2008.

Accession Number: 20080730–5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–851–018.

Applicants: Hydro-Quebec Energy Services (U.S.) Inc.

Description: HQ Energy Services, Inc submits Third Revised Sheet 1 et al. to FERC Electric Rate Schedule 1.

Filed Date: 07/29/2008.

Accession Number: 20080731–0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER99–2541–010; ER01–1764–007; ER04–582–008; ER05–731–004; ER97–3553–006; ER97–3556–018; ER99–220–015; ER99–221–013.

Applicants: Carthage Energy, LLC; PEI Power II LLC; Hartford Steam Company; Central Maine Power Company; Rochester Gas & Electric Corporation; Energetix, Inc.; NYSEG SOLUTIONS INC; New York State Electric & Gas Corp.

Description: The Energy East submits First Revised Sheet 1 *et al.* to FERC Electric Tariff, Third Revised Volume 1, to be effective 7/31/08.

Filed Date: 07/30/2008.

Accession Number: 20080731–0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER00–3614–009; ER01–1300–008; ER08–337–003; ER06–1351–003.

Applicants: BP Energy Company; Whiting Clean Energy, Inc.; Watson Cogeneration Company; BP West Coast Products LLC.

Description: BP Public Utilities notifies FERC of non-material change in status with respect to their market-based rate wholesale power sales authority.

Filed Date: 07/29/2008.

Accession Number: 20080731–0060.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER01–1403–008; ER06–1443–004; ER04–366–006; ER01–2968–009; ER01–845–007; ER05–1122–005; ER08–107–002.

Applicants: FirstEnergy Operating Companies; Pennsylvania Power Company; Jersey Central Power & Light Co.; FirstEnergy Solutions Corp.; FirstEnergy Generation Corporation; FirstEnergy Nuclear Generation Corporation; FirstEnergy Generation Mansfield Unit 1.

Description: The FirstEnergy Companies submits a notice of non-material change in status.

Filed Date: 07/25/2008.

Accession Number: 20080729–0129.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER01–2830–003.

Applicants: Roseburg Forest Products Company.

Description: Roseburg Forest Products submits an Amendment to their Application as a Category 1 Seller pursuant to Order 697.

Filed Date: 07/28/2008.

Accession Number: 20080728–4003.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER03–774–010.

Applicants: Eagle Energy Partners I, LP.

Description: Eagle Energy Partners I, LP submits Notice of Non-Material Change in Status.

Filed Date: 07/29/2008.

Accession Number: 20080731–0062.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER04–925–019.

Applicants: Merrill Lynch Commodities, Inc.

Description: Submission of Letters of Concurrence in Support of Petition of Merrill Lynch Commodities, Inc Requesting Classification as a Category 1 Seller Pursuant to Order 697.

Filed Date: 07/29/2008.

Accession Number: 20080729–5031.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER04–1244–001.
Applicants: NorthPoint Energy Solutions Inc.
Description: NorthPoint Energy Services submits a list of its transmission and generation assets in the form provided in Appendix B of Order 697.
Filed Date: 07/29/2008.
Accession Number: 20080730–0182.
Comment Date: 5 p.m. Eastern Time on Thursday, August 07, 2008.

Docket Numbers: ER05–658–002.
Applicants: Harvard Dedicated Energy Limited.
Description: Order No. 697 Compliance Filing—Category 1 Qualification Application Amendment of Harvard Dedicated Energy Limited.
Filed Date: 07/30/2008.
Accession Number: 20080730–5104.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER07–501–013; ER07–758–009; ER08–649–007; ER02–537–017.
Applicants: Birchwood Power Partners, L.P., EFS Parlin Holdings, LLC, Inland Empire Energy Center, L.L.C.; Shady Hills Power Company, L.L.C.
Description: GE Companies submits first revised Volume 1 to their respective tariffs and on 7/29/08 submit a correction to this filing.
Filed Date: 07/28/2008; 07/29/2008.
Accession Number: 20080730–0037; 20080730–0031.
Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–656–003.
Applicants: Shell Energy North America (U.S.), L.P.
Description: Shell Energy North America (U.S.), LP submits its Second Revised Rate Schedule FERC 1 to restore the standard Midwest Indep. Transmission System Operator Inc ancillary service provision under ER08–656.
Filed Date: 07/28/2008.
Accession Number: 20080730–0036.
Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–671–002.
Applicants: Florida Power Corporation.
Description: Florida Power Corp submits its compliance filing re a service agreement with the City of Gainesville, Florida under ER08–671.
Filed Date: 07/28/2008.
Accession Number: 20080730–0116.
Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–679–002.
Applicants: Tallgrass Energy Partners.
Description: Tallgrass Energy Partners, LLC submits a substitute original Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 07/29/2008.
Accession Number: 20080730–0114.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER08–720–003.
Applicants: Consolidated Edison Co. of New York, Inc.
Description: Refund report filed in compliance with the June 30, 2008 order from the Director, Division of Tariffs and Markets Development—East of Consolidated Edison Company of New York, Inc.
Filed Date: 07/30/2008.
Accession Number: 20080730–5128.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–896–001.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company submits their compliance filing with FERC's June 30, 2008 Order.
Filed Date: 07/30/2008.
Accession Number: 20080731–0214.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–1010–001.
Applicants: Commonwealth Edison Company.
Description: Commonwealth Edison Company et al submits incorporate charges applicable to wholesale distribution service provided to the City of Genevam Illinois which are approved by the 7/10/08 Order etc. under ER08–1010.
Filed Date: 07/28/2008.
Accession Number: 20080730–0035.
Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1043–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits amendments to the 5/30/09 filing of revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff under ER08–1043.
Filed Date: 07/29/2008.
Accession Number: 20080731–0059.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER08–1063–001.
Applicants: Southern Company Services, Inc.
Description: Southern Companies submits Substitute Second Revised Service Agreement 473 in compliance with FERC's 7/18/08 letter order.
Filed Date: 07/25/2008.
Accession Number: 20080729–0131.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1126–001; ER08–1127–001; ER08–1128–001; ER08–1129–001; ER08–1130–001; ER08–1131–001; ER08–1132–001; ER08–1133–001; ER08–1134–001; ER08–1135–001; ER08–1136–001; ER08–1137–001; ER08–1138–001; ER08–1139–001.
Applicants: Georgia-Pacific Brewton LLC; GP Big Island, LLC; Brunswick Cellulose, Inc.; Georgia-Pacific Cedar Springs LLC; Georgia-Pacific Consumer Operations LLC; Georgia-Pacific Con Prod LP Green Bay W; Georgia-Pacific Consumer Products LP Mus; Georgia-Pacific Cons Prods LP Naheola; Georgia-Pacific Cons Prods LP Savannah; Georgia-Pacific LLC Crosset; Georgia-Pacific Monticello LLC; Georgia-Pacific Toledo LLC; Leaf River Cellulose, LLC.
Description: Georgia-Pacific Brewton LLC *et al.* submits First Substitute Original Sheet 1 *et al.* to under ER08–1134 *et al.*
Filed Date: 07/28/2008.
Accession Number: 20080730–0032.
Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1250–001.
Applicants: Haverhill North Coke Company.
Description: Haverhill North Coke Company submits a revised market-based rate tariff that clarifies that there are no limitations on its sales at market-based rates as a result of its QF status under ER08–1250.
Filed Date: 07/28/2008.
Accession Number: 20080730–0033.
Comment Date: 5 p.m. Eastern Time on Thursday, August 07, 2008.

Docket Numbers: ER08–1299–000.
Applicants: Merck & Company, Inc.
Description: Merck & Co, Inc submits a request for authorization to sell energy and capacity at market-based rates etc.
Filed Date: 07/25/2008.
Accession Number: 20080729–0130.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1300–000.
Applicants: Story Wind, LLC.
Description: Story Wind, LLC submits a request for authorization to sell energy and capacity market-based rates.
Filed Date: 07/25/2008.
Accession Number: 20080725–4007.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1308–000.
Applicants: Southwest Power Pool Inc.

Description: Southwest Power Pool Inc submits an executed Service Agreement for Network Transmission Service etc.

Filed Date: 07/25/2008.

Accession Number: 20080729–0001.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1309–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits proposed revisions to Schedule, Long-Term and Short-Term Firm Point-to-Point Transmission Services etc.

Filed Date: 07/25/2008.

Accession Number: 20080729–0132.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1310–000.

Applicants: American Electric Power Service Corporat.

Description: The American Electric Power Service Corp submits a Limited Notice to Proceed for a Construction Agreement with Trans-Allegheny Interstate Line Co under ER08–1310.

Filed Date: 07/28/2008.

Accession Number: 20080730–0117.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1311–000.

Applicants: SUMAS COGENERATION CO LP.

Description: Sumas Cogeneration, LP submits a Notice of Cancellation to terminate its market-base rate tariff.

Filed Date: 07/28/2008.

Accession Number: 20080730–0118.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1312–000.

Applicants: ISO New England Inc. and New England Power.

Description: ISO New England Inc *et al.* submits amendments to the Financial Assurance Policies.

Filed Date: 07/28/2008.

Accession Number: 20080730–0129.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1313–000.

Applicants: ISO New England Inc. and New England Pow.

Description: ISO New England *et al.* submits revised tariff sheets re the extension of the demand response reserves pilot program under ER08–1313.

Filed Date: 07/28/2008.

Accession Number: 20080730–0119.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1314–000.

Applicants: Wheelabrator Frackville Energy Company I.

Description: Petition of Wheelabrator Frackville Energy Co for acceptance of Market-Based Rate Tariff and granting waivers and blanket approvals under ER08–1314.

Filed Date: 07/28/2008.

Accession Number: 20080730–0120.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1315–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits a new Rate Schedule 311, Macedonia Interconnection Agreement Between Florida Power & Light Company and Georgia Transmission Corporation under ER08–1315.

Filed Date: 07/28/2008.

Accession Number: 20080730–0121.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1316–000.

Applicants: Avista Corporation.

Description: Avista Corp *et al.* submits revised tariff sheets to existing non-conforming long-term service agreements.

Filed Date: 07/29/2008.

Accession Number: 20080730–0115.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER08–1319–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits their Engineering and Procurement Agreement.

Filed Date: 07/29/2008.

Accession Number: 20080731–0055.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER08–1320–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a letter agreement between SCE and City of Victorville.

Filed Date: 07/29/2008.

Accession Number: 20080731–0054.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER08–1322–000.

Applicants: Whiting Clean Energy, Inc.

Description: Whiting Clean Energy, Inc submits a Notice of Cancellation of the FERC Electric Tariff, First Revise Volume 1, Rate Schedule No 2.

Filed Date: 07/29/2008.

Accession Number: 20080731–0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER08–1324–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an executed Service Agreement for Network Integration Transmission Service with Kansas Power Pool etc.

Filed Date: 07/30/2008.

Accession Number: 20080731–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–1325–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an executed Service agreement for Network Integration Transmission Service with Associated Electric Cooperative Inc.

Filed Date: 07/30/2008.

Accession Number: 20080731–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–15–001.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Company Order No. 890 Compliance Filing under Docket No. OA08–15.

Filed Date: 07/28/2008.

Accession Number: 20080728–5111.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–24–001; PH08–25–001.

Applicants: Horizon Asset Management, Inc.

Description: Horizon Asset Management, Inc submits a Notice of Amendment to FERC 65 and FERC 65A filings and a Certificate of Service.

Filed Date: 07/25/2008.

Accession Number: 20080730–0038.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: PH08–33–000.

Applicants: Equitable Resources Inc.

Description: Notification of Exemption.

Filed Date: 07/30/2008.

Accession Number: 20080730–5126.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a

compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–18423 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 6, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP03–36–033.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits the Thirty-Eighth Revised Sheet 9 to FERC Gas Tariff, First Revised Volume 1, to be effective 8/4/08.

Filed Date: 08/04/2008.

Accession Number: 20080805–0115.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: RP06–200–046.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Second Revised Sheet 8B *et al.* to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP06–569–006. RP07–376–003. RP01–245–028.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corp forwards a DVD that contains their Report of Refund.

Filed Date: 08/01/2008.

Accession Number: 20080804–0220.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–481–000.

Applicants: Texas Gas Transmission. LLC.

Description: Texas Gas Transmission, LLC submits Fourth revised Sheet 240 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0227.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–482–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits First Revised Sheet 32 to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0226.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–483–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Co, LLC submits First Revised Sheet 5 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0225.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–484–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Co submits Sixth Revised Sheet 320 to its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0224.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–485–000.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits First Revised Sheet 500 to FERC Gas Tariff, Original Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0223.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–486–000.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Horizon Pipeline Company, LLC submits Fifth Revised Sheet 5 to FERC Gas Tariff, Original Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0222.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–487–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Second Revised Sheet 313 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 08/01/2008.

Accession Number: 20080804–0221.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–488–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Second Revised Sheet 300 to FERC Gas Tariff, First Revised Volume 1, and effective 9/4/08 under RP08–488.

Filed Date: 08/04/2008.

Accession Number: 20080805–0101.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: CP06–5–010.

Applicants: Empire Pipeline Inc.

Description: Empire Pipeline Inc., submits Original Sheet No. 0 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 11/1/08.

Filed Date: 08/01/2008.

Accession Number: 20080805–0096.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: CP07–417–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Original Sheet 35A *et al.* to FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 08/01/2008.

Accession Number: 20080805–0215.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: CP08–17–001.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits its proposed FERC Gas Tariff, Original Volume No. 1, to be effective 9/1/08.

Filed Date: 08/01/2008.

Accession Number: 20080805–0120.

Comment Date: 5 p.m. Eastern Time on Friday, August 15, 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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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–18454 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 5, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–59–001.

Applicants: Harbinger Capital Partners Master Fund I.

Description: Harbinger Capital Partners Master Fund I, Ltd informs FERC that on 3/21/08 filed an application with the FERC pursuant to Federal Power Act section 203 for any authorizations required for Harbinger etc.

Filed Date: 07/28/2008.

Accession Number: 20080730–0030.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–85–000.

Applicants: Hardee Power Partners Limited.

Description: Hardee Power Partners Limited submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 07/31/2008.

Accession Number: 20080804–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1767–011.

Applicants: Tenaska Frontier Partners, Ltd.

Description: Tenaska Frontier Partners, Ltd submits Fourth Revised Sheet 1 *et al.* to FERC Electric Rate Schedule 1.

Filed Date: 07/23/2008.

Accession Number: 20080729–0211.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER99–2541–010; ER05–731–004; ER97–3556–018; ER04–582–008; ER97–3553–006; ER99–220–015; ER99–221–013; ER01–1764–007.

Applicants: Carthage Energy, LLC; Central Maine Power Company; Energetix, Inc.; Hartford Steam Company; Rochester Gas & Electric Corporation; NYSEG SOLUTIONS INC; New York State Electric & Gas Corp.; PEI Power II, LLC.

Description: The Energy East Companies submits First Revised Sheet 1 *et al.* to FERC Electric Tariff, Third Revised Volume 1, to be effective 7/31/08.

Filed Date: 07/30/2008.

Accession Number: 20080731–0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER00–895–009.

Applicants: Onondago Cogeneration Limited Partnership.

Description: Cancellation of Market-Based Rate Tariff, Conditional Withdrawal of Request for Category 1 Seller Status eratta, The Certificate of Service was inadvertently omitted from the filing.

Filed Date: 08/01/2008.

Accession Number: 20080801–5228.

Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER00–1712–009; ER02–2408–004; ER00–744–007; ER02–1327–006; ER00–1703–004; ER02–1749–004; ER02–1747–004; ER99–4503–006; ER00–2186–004; ER01–1559–005.

Applicants: PPL Electric Utilities Corporation; Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; PPL EnergyPlus, LLC; PPL Edgewood Energy, LLC; PPL Shoreham Energy, LLC; PPL Great Works, LLC; PPL Maine, LLC; PPL Wallingford Energy LLC.

Description: PPL Companies notifies FERC of a non-material change in the characteristics upon which FERC relied in granting them based rate authority.

Filed Date: 07/30/2008.

Accession Number: 20080801–0101.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER03–769–003.

Applicants: American PowerNet Management, LP.

Description: American PowerNet Management, LP submits charts showing that they do not own any generation and transmission assets.

Filed Date: 07/30/2008.

Accession Number: 20080801–0150.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER03–983–014.

Applicants: Fox Energy Company, LLC.

Description: Fox Energy Company, LLC submits Original Sheet 1 *et al.* to FERC Electric Tariff, First Revised Volume 1 to its tariff.

Filed Date: 07/30/2008.
Accession Number: 20080801–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER04–230–037; ER04–230–038.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits an errata to correct ministerial errors or omissions to the tariff sheets filed 3/24/08.
Filed Date: 07/31/2008.
Accession Number: 20080801–0085.
Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER04–714–020; ER04–714–020; EL05–89–009.
Applicants: Florida Power & Light Co New England; Florida Power & Light Company; *Maine Public Utilities Commission* v. *Central Maine Power Company*.
Description: Revised Refund Report pursuant to FERC Order dated March 24, 2008.
Filed Date: 08/01/2008.
Accession Number: 20080801–5229.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER06–560–002.
Applicants: Credit Suisse Energy LLC.
Description: Credit Suisse Energy, LLC submits First Revised Sheet 1 *et al.* to FERC Electric Rate Schedule 1, as a supplement to the 6/30/08 filing.
Filed Date: 07/31/2008.
Accession Number: 20080804–0101.
Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER06–1014–006.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits Price Validation Informational Report from the period 1/1/08 through 6/30/08 pursuant to FERC's 7/14/06 Order under ER06–1014.
Filed Date: 08/01/2008.
Accession Number: 20080805–0073.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER06–1402–001; ER06–1403–001; ER08–1213–001.
Applicants: Westmoreland Partners (ROVA I); Westmoreland Partners (ROVA II); Westmoreland Partners.
Description: Westmoreland Partners amends its 6/30/08 filing of a request for determination of a category 1 Seller Status and submit an errata to this filing.
Filed Date: 07/30/2008.
Accession Number: 20080804–0113.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER07–1105–005.
Applicants: Cedar Creek Wind Energy, LLC.
Description: Cedar Creek Wind Energy LLC submits notification of a non-material change in status with respect to its market based rate authority.
Filed Date: 07/30/2008.
Accession Number: 20080801–0103.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER07–1372–011.
Applicants: Midwest Independent Transmission System.
Description: Readiness Certification of Midwest Independent Transmission System Operator, Inc.
Filed Date: 07/25/2008.
Accession Number: 20080725–5085.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER07–1386–003.
Applicants: Tatanka Wind Power, LLC.
Description: Notice of Non-Material Change in Status of Tatanka Wind Power, LLC.
Filed Date: 08/01/2008.
Accession Number: 20080801–5063.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER07–1402–001.
Applicants: Allegheny Generating Company.
Description: Supplemental Information of Allegheny Generating Company.
Filed Date: 08/01/2008.
Accession Number: 20080801–5069.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–41–002.
Applicants: ISO New England Inc. and New England Power.
Description: ISO New England, Inc. *et al.* submits tariff sheets, and testimony of Peter K. Wong, and related materials regarding revisions to section 12.9 of Market Rule 1 etc.
Filed Date: 07/31/2008.
Accession Number: 20080804–0111.
Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–100–003; ER07–265–003; ER07–1215–004.
Applicants: Sempra Energy Trading LLC; Sempra Energy Solutions LLC; The Royal Bank of Scotland plc.
Description: Sempra Energy Trading LLC *et al.* submits a notice of change in status in compliance with the reporting requirements set forth in section 35.42 of the regulations of FERC and Order 652.
Filed Date: 07/30/2008.
Accession Number: 20080801–0104.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–832–002.
Applicants: ISO New England Inc.
Description: PTO Administrative Committee *et al.* submit the proposed substitution and withdrawal of tariff sheets under Schedules 20A and 21 of the ISO New England Inc filed on 4/15/08.
Filed Date: 07/18/2008.
Accession Number: 20080731–0216.
Comment Date: 5 p.m. Eastern Time on Friday, August 8, 2008.

Docket Numbers: ER08–1094–001; ER08–1095–001; ER08–1097–001; ER08–1326–000; ER99–1213–011.
Applicants: NAEA Energy Massachusetts, LLC; NAEA Ocean Peaking Power, LLC; NAEA Rock Springs, LLC; NAEA Newington Energy, LLC; LAKEWOOD COGENERATION LP.
Description: NAEA Energy Massachusetts, LLC *et al.* submits revised market-based rate tariffs and revised reactive power and voltage control.
Filed Date: 07/23/2008.
Accession Number: 20080804–0126.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: ER08–1096–000.
Applicants: NAEA Lakewood Cogeneration, LP.
Description: Lakewood Cogeneration, LP request to withdraw the Notice and request to terminate the docket.
Filed Date: 07/02/2008.
Accession Number: 20080708–0008.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ER08–1106–002; ER08–1106–001.
Applicants: MATL LLP.
Description: MATL LLP submits their responses to FERC's 7/25/08 Deficiency Letter.
Filed Date: 08/01/2008.
Accession Number: 20080805–0075.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1294–000.
Applicants: Crystal Lake Wind II, LLC.
Description: Crystal Lake Wind II, LLC's request for authorization to sell energy and capacity at market-based rates.
Filed Date: 07/25/2008.
Accession Number: 20080731–0248.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1308–001.
Applicants: Southwest Power Pool Inc.
Description: Southwest Power Pool, Inc. submits an errata to their 6/25/08 filing as Exhibit I and II of their Agreements pursuant to Order 614.
Filed Date: 07/31/2008.
Accession Number: 20080804–0102.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1316–001.

Applicants: Avista Corporation.

Description: Avista Corporation submits an errata to their 7/28/08 filing of revised tariff sheets amending existing non-conforming long-term service agreements.

Filed Date: 07/31/2008.

Accession Number: 20080804–0103.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1317–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits an amendment to both the currently effective CAISO Tariff as well as their Market Redesign and Technology Upgrade Tariff.

Filed Date: 07/28/2008.

Accession Number: 20080801–0001.

Comment Date: 5 p.m. Eastern Time on Monday, August 18, 2008.

Docket Numbers: ER08–1318–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co. submits proposed rate changes for wholesale and retail electric transmission rates, to be effective 10/1/08.

Filed Date: 07/30/2008.

Accession Number: 20080801–0164.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–1321–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits their notice regarding the CAISO's revised Transmission Access Charges, effective 4/4/08.

Filed Date: 07/30/2008.

Accession Number: 20080801–0110.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–1323–000.

Applicants: Fowler Ridge Wind Farm LLC.

Description: Application of Fowler Ridge Wind Farm LLC for order accepting market-based rate tariff, granting authorization and blanket authority and waiving certain requirements.

Filed Date: 08/01/2008.

Accession Number: 20080805–0072.

Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1324–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc. submits an executed Service Agreement for Network Integration Transmission Service with Kansas Power Pool etc.

Filed Date: 07/30/2008.

Accession Number: 20080731–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–1325–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc. submits an executed Service agreement for Network Integration Transmission Service with Associated Electric Cooperative Inc.

Filed Date: 07/30/2008.

Accession Number: 20080731–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ER08–1327–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Twenty-Second Quarterly Filing of Facilities Agreement (Revised Schedule FERC 114) with the City and County of San Francisco.

Filed Date: 07/31/2008.

Accession Number: 20080801–0134.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1329–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits a proposal for increase in rates for transmission service including revised tariff sheets proposed to be included in the Open Access Transmission Tariff etc.

Filed Date: 07/31/2008.

Accession Number: 20080804–0189.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1330–000; ER08–1331–000; ER08–1332–000.

Applicants: Hot Spring Power Company, LLC; Chehalis Power Generating, LLC; Choctaw Gas Generation, LLC.

Description: Hot Spring Power Company, LLC *et al.* submit a Notice of Succession to notify the Commission of a corporate name change, and to adopt, as their own the FERC Electric Rate Schedules etc.

Filed Date: 07/31/2008.

Accession Number: 20080804–0110.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1333–000.

Applicants: Invenergy Cannon Falls LLC.

Description: Invenergy Cannon Falls LLC submits Original Sheet 1, to FERC Electric Tariff, Original Volume 2 with supporting cost data which specifies its revenue requirement for providing cost-based Reactive Supply and Voltage Control etc.

Filed Date: 07/31/2008.

Accession Number: 20080804–0109.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1334–000.

Applicants: Ameren Services Company as Agent for Union.

Description: Union Electric Co submits an executed service agreement for Wholesale Distribution Service with the City of Fredericktown, Missouri.

Filed Date: 07/31/2008.

Accession Number: 20080804–0108.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1335–000.

Applicants: Southern Company Services, Inc.

Description: Alabama Power Co *et al.* submit for filing a rollover network integration transmission service agreement with Southern Wholesale Energy.

Filed Date: 07/31/2008.

Accession Number: 20080804–0107.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1336–000.

Applicants: Energy Systems North East LLC.

Description: Energy Systems North East LLC submits an application for authorization to make market-based wholesale sales of energy capacity and ancillary service under FERC Electric Tariff 1 under ER08–1336.

Filed Date: 08/01/2008.

Accession Number: 20080805–0076.

Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1337–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement.

Filed Date: 07/31/2008.

Accession Number: 20080804–0127.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1338–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. files revised tariff sheets amending Schedule 1–A of the Open Access Transmission Tariff in order to increase the rate cap for its Tariff Administration Service Charge.

Filed Date: 07/31/2008.

Accession Number: 20080804–0128.

Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1339–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits service agreements.
Filed Date: 07/31/2008.
Accession Number: 20080804–0129.
Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1340–000; ER08–1341–000; ER08–1342–000.
Applicants: Florida Power & Light Company; Progress Energy Florida; Tampa Electric Company.
Description: Florida Reserve Sharing Group *et al.* submit the Florida Sharing Group Agreement.
Filed Date: 07/31/2008.
Accession Number: 20080804–0130.
Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Docket Numbers: ER08–1343–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits a revision to its Transmission Owner Tariff FERC Electric Tariff, Second Revised Volume to reflect proposed changes to its revenue requirements etc. under ER08–1343. Volume 1, General Information.
Filed Date: 08/01/2008.
Accession Number: 20080804–0204.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1344–000.
Applicants: Reliant Energy Mid-Atlantic Power Holdings.
Description: Reliant Energy Mid-Atlantic Power Holdings, LLC submits a Notice of Cancellation of their market-based rate tariff and a revised sheet indicating the cancellation of Third Revised Sheet 1 to FERC Electric Tariff 2nd Revised Volume 1 under ER08–1344.
Filed Date: 08/01/2008.
Accession Number: 20080804–0234.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1345–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an agreement with the Midwest Independent Transmission System Operator, Inc. concerning the use of capacity committed to serve the needs of loads in the transmission zone etc., ER08–1345.
Filed Date: 08/01/2008.
Accession Number: 20080804–0233.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1346–000.
Applicants: New England Power Pool.
Description: The New England Power Pool Participants Committee submits counterpart signature pages of the New England Power Pool Agreement with ESPI New England, Inc. *et al.* under ER08–1346.
Filed Date: 08/01/2008.
Accession Number: 20080804–0232.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1347–000; ER00–895–009.
Applicants: Onodaga Cogeneration Limited Partnership.
Description: Onondaga Cogeneration Limited Partnership submits a notice canceling their market-based rate tariff, Substitute Original Sheet 1 to FERC Electric Tariff, Original Volume 1, effective 8/4/08 under ER08–1347 *et al.*
Filed Date: 08/01/2008.
Accession Number: 20080804–0231; 20080801–5228.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1349–000.
Applicants: California Independent System Operator C.
Description: California Independent System Operator Corporation's informational filing that provides notice regarding their revised Transmission Access Charges effective 4/23/08 under ER08–1349.
Filed Date: 08/01/2008.
Accession Number: 20080804–0229.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1350–000.
Applicants: Sempra Energy Solutions LLC, San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co's *et al.* application for limited authorization of affiliate transactions, waiver of prior authorization requirement concerning certain sales and purchases of wholesale capacity by affiliated entities, ER08–1350.
Filed Date: 08/01/2008.
Accession Number: 20080804–0228.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Docket Numbers: ER08–1352–000.
Applicants: Alabama Power Company.
Description: Alabama Power Co. submits Revision 11 to Rate Schedule MUN–1 of FERC Electric Tariff, Original Volume 1 under ER08–1352.
Filed Date: 08/01/2008.
Accession Number: 20080804–0235.
Comment Date: 5 p.m. Eastern Time on Friday, August 22, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–54–000.
Applicants: MDU Resources Group, Inc.

Description: MDU Resources Group Inc submits an application for authority to issue short-term debt securities in the aggregate principal amount of up to $330,000,000 in the form of one or more promissory notes to finance etc.
Filed Date: 07/22/2008.
Accession Number: 20080724–0028.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: ES08–55–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc. submits an application for authority to issue an additional 400,000 shares of company stock.
Filed Date: 07/30/2008.
Accession Number: 20080801–0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: ES08–56–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group Inc. submits an application for authorization to issue up to one billion dollars worth of MDU Resources securities.
Filed Date: 07/31/2008.
Accession Number: 20080801–0106.
Comment Date: 5 p.m. Eastern Time on Thursday, August 21, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–123–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits their Notification Filing pursuant to sections 19.9 and 32.5 of its Energy Markets and Open Access. Transmission Tariff of the FERC's Order 890, 890–A and 890–B.
Filed Date: 07/30/2008.
Accession Number: 20080801–0108.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 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. E8–18455 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC07–4–003]

The North American Electric Reliability Corporation; Notice of Filing

August 4, 2008.

Take notice that on July 31, 2008, The North American Electric Reliability Corporation filed a response to the Commission's Orders issued on December 20, 2007, *Direct Energy Services, LLC, et al.*, 121 FERC ¶ 61,274 (2007) and April 4, 2008, *Direct Energy Services, LLC, et al.*, 123 FERC ¶ 61,016 (2008).

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. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to 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 online 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 September 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18375 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–27–000]

Duke Energy Kentucky, Inc.; Notice of Petition for Rate Approval

August 5, 2008.

Take notice that on July 25, 2008, Duke Energy Kentucky, Inc. (DE-Kentucky) filed a petition for rate approval pursuant to section 284.123 and 284.224 of the Commission's regulations. DE-Kentucky is proposing a new maximum monthly reservation charge of $0.2781 per Dth of demand and a commodity charge of $0.0000 per Dth for its no-notice quality service provided under its Order 63 blanket certificate.

Any person desiring to participate in this rate proceeding must file a motion 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. Friday August 15, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18461 Filed 8–8–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8702–5]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to CACI, Inc., Subcontractor of EPA Contractor U.S. Department of Justice

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The U. S. Environmental Protection Agency (''EPA'') hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose confidential business information (''CBI'') submitted to EPA Region 9 pursuant to CERCLA to U.S. Department of Justice contractor CACI, Inc., of Arlington, Virginia.

DATES: Comments may be submitted by August 25, 2008.

ADDRESSES: Comments should be sent to: Keith Olinger, Environmental Protection Agency, Region 9, SFD–7–5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3125.

FOR FURTHER INFORMATION CONTACT: Keith Olinger, Superfund Division, Environmental Protection Agency, Region 9, SFD–7–5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3125.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment:

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended (commonly known as ''Superfund''), requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract with the U.S. Department of Justice (''DOJ''), Interagency Agreement No. DW–15–95566201, for enforcement support in relation to the Operating Industries, Inc. Superfund Site, Inc. pursuant to DOJ's MEGA3 contract with CACI, Inc., Contract No. DJJ07–C–1521.

Enforcement support services will be provided to EPA by CACI, Inc. EPA has determined that disclosure of CBI to CACI, Inc., and its employees, is necessary in order for the company to carry out its work for EPA under its contract with the DOJ. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at the Operating Industries Inc., Superfund Site. The information would be disclosed to the above-named DOJ contractor, CACI, Inc. for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.310(h)(2). EPA Region 9 will require that each of the contractor's employees with access to CBI sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) will refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) will return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by the contractor for performance of the work required by the contract or upon completion of the contract.

Dated: July 24, 2008.

Sheryl Bilbrey,

Acting Director, Superfund Division, Region IX.

[FR Doc. E8–18481 Filed 8–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–8702–6]

Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health; Draft Technical Support Document, Volume 3: Development of Site-Specific Bioaccumulation Factors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Time Extension for Acceptance of Scientific Views on draft document.

SUMMARY: On June 30, 2008, EPA published a **Federal Register** notice that solicited scientific views on the Draft *Technical Support Document, Volume 3: Development of Site-Specific Bioaccumulation Factors* (hereafter ''Draft Site-Specific BAF TSD'') that accompanies the Methodology and the National BAF TSD. See 73 FR 36866. Today, in response to stakeholder requests, EPA is notifying the public that we will extend the time period to submit scientific views on this document for 45 days, until September 29, 2008.

DATES: Scientific views must be received on or before September 29, 2008. Scientific views postmarked after this date may not receive the same consideration.

ADDRESSES: Submit your scientific views, identified by Docket ID No. EPA–HQ–OW–2008–0494, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting scientific views.
- *Email: OW-Docket@epa.gov*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC. 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 scientific views to Docket ID No. EPA–HQ–OW–2008–0494. EPA's policy is that all scientific views 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* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket/ EPA/DC, 1301 Constitution Ave, NW., EPA West,

Room 3334, Washington DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Heidi L. Bethel, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–2054; *bethel.heidi@epa.gov.*

Dated: August 1, 2008.

Suzanne M. Rudzinski,

Acting Office Director, Office of Science and Technology.

[FR Doc. E8–18483 Filed 8–8–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, August 5, 2008, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Mr. Scott Polakoff, acting in the place and stead of Director John M. Reich (Director, Office of Thrift Supervision), concurred in by Director Thomas J. Curry (Appointive), Chairman Sheila C. Bair, and Director John C. Dugan (Director, Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Federal Deposit Insurance Corporation

Dated: August 5, 2008.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–18407 Filed 8–8–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Petition P1–08]

Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption From Mandatory Rate Tariff Publication; Notice of Filing

Notice is hereby given that National Customs Brokers and Forwarders Association of America, Inc. (''Petitioner'') has petitioned, pursuant to 49 U.S.C. 40103 (former Section 16 of the Shipping Act of 1984 (''the Shipping Act'')), and 46 CFR 502.67 and 502.69, for an exemption from the provisions of the Shipping Act that require non-vessel-operating common carriers (''NVOCCs'') to publish and adhere to all ocean tariff rates. Specifically, Petitioner requests that NVOCCs be exempted from the provisions of the Shipping Act requiring NVOCCs to publish and adhere to rate tariffs in those instances where an NVOCC has individually negotiated rates with its shipping customers and memorialized those rates in writing. Petitioner further clarifies its request by stating that: (1) The exemption would be voluntary and apply only to rate tariffs; (2) negotiated rates and related disputes would be governed by contract law and therefore exempt from 49 U.S.C. 40501(a)–(e) and (g) (formerly sections 8(a), (b), (d) and (g) of the Shipping Act—governing tariff contents and publication, time volume rates, 30 day's notice for increases, and accessibility and accuracy of automated tariffs); 40503 (formerly section 8(e)—setting out procedures for refunds and waivers) and 41104(2), (4) and (8) (formerly sections 10(b)(2), (4) and (8)—prohibiting service not in accordance with tariffs, unfair or unjustly discriminatory practices regarding rates, cargo classifications, cargo space accommodations, loading or landing of freight or adjustment or settlement of claims; and, undue or unreasonable preferences or advantages or undue or unreasonable prejudices or disadvantages); (3) NVOCC Service Arrangements would continue to be filed with the FMC and essential terms published; (4) all NVOCC-negotiated rates would be memorialized in writing; (5) the Commission would have access to documentation underlying negotiated rates; (6) the exemption would not convey antitrust immunity on NVOCCs; and (7) the exemption would apply to FMC-licensed or registered NVOCCs.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than September 26, 2008. Replies shall consist of an original and fifteen (15) copies, be directed to the Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel Edward D. Greenberg, Esq., Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., 1054 Thirty-First Street, NW., Washington, DC 20037–4492. A copy of the reply shall be submitted in electronic form (Microsoft Word 2003) by e-mail to *secretary@fmc.gov.* The Petition will be posted on the Commission's Web site at *http://www.fmc.gov/reading/Petitions.asp.* Replies filed in response to this petition also will be posted on the Commission's Web site at this location.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–18456 Filed 8–8–08; 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 August 25, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Russell Goldsmith, individually, and as part of a family group, including the Bram & Elaine Goldsmith Family Trust, the Elaine Goldsmith Revocable Trust, the Bruce Leigh Goldsmith Revocable Trust, the Goldsmith Family Partnership, the Goldsmith Family Foundation, and other related family trusts, partnerships, and foundations, all of Los Angeles, California, to retain control and to acquire additional voting shares of City National Corporation, and thereby indirectly retain control and acquire additional voting shares of City National Bank, both of Beverly Hills, California.

Board of Governors of the Federal Reserve System, August 5, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–18365 Filed 8–8–08; 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 applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Altrust Financial Services, Inc., Cullman, Alabama, to acquire 100 percent of the voting shares of Generation Bank, Centre, Alabama (in organization).

Board of Governors of the Federal Reserve System, August 5, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–18366 Filed 8–8–08; 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 applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 5, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Global Bancorp, to become a bank holding company by acquiring 100 percent of the voting shares of Global Trust Bank, both of Mountain View, California.

Board of Governors of the Federal Reserve System, August 6, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–18458 Filed 8–8–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Meeting Times and Dates:

(All times are Pacific Daylight Time)

1 p.m.–5 p.m., September 2, 2008.

9 a.m.–5 p.m., September 3, 2008.

9 a.m.–2 p.m., September 4, 2008.

Public Comment Times and Dates:

(All times are Pacific Daylight Time)

5 p.m.–6 p.m., September 2, 2008.

7:30 p.m.–8:30 p.m., September 3, 2008.

Place: Crowne Plaza Redondo Beach, 300 N. Harbor Drive, Redondo Beach, California 90277, Telephone: (310) 318–7705, Fax: (310) 376–61930.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. The key functions of the Advisory Board include providing advice on the development of probability of causation

guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Status Update; Special Exposure Cohort (SEC) Petitions for: Pantex; Connecticut Aircraft Nuclear Engine Laboratory (CANEL); SEC Petition Updates: Chapman Valve; Special Exposure Cohort (SEC) Petition Status Update(s); Department of Labor (DOL) Update; Department of Energy (DOE) Update; Work Group reports; Subcommittee on Dose Reconstruction Reviews Report; and Board Future Plans and Schedules.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according the policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment), if a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** notice that announces Board and Subcommittee meetings. If an individual in making a statement reveals personal information (*e.g.*, medical information) about themselves that information will not usually be redacted. The NIOSH Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. All disclosures of information concerning third parties will be redacted. If it comes to the attention of the Designated Federal Officer (DFO) that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Zaida Burgos, Committee Management Specialist, NIOSH, CDC, 1600 Clifton Road, Atlanta, Georgia 30033, Telephone (404) 498–2548 Toll Free: (800) CDC–INFO, E-mail *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 4, 2008.

Daniel Riedford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–18426 Filed 8–8–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: September 10, 2008, 11 a.m.–4 p.m., EST., September 11, 2008, 11 a.m.–4 p.m., EST.

Place: (Web Conference).

Status: The meeting will be open to the public; Web conference access limited only by availability of telephone ports.

Purpose: The Committee will be focusing on rural issues and how the Title VII Interdisciplinary, Community-Based Training Grant Programs identified under sections 751–756, Part D of the Public Health Service Act can respond to the current rural healthcare workforce needs. The Committee has invited speakers to highlight various topics related to rural healthcare workforce issues including, but not limited to, discipline specific shortages; recruitment and retention; health professions training; faculty development; telemedicine; and other specific rural health care issues. The meeting will afford committee members with the opportunity to identify and discuss the current status of the healthcare workforce in rural America and formulate appropriate recommendations to the Secretary and to the Congress regarding a variety of training strategies to address the health workforce shortage issues.

Agenda: The ACICBL agenda includes an overview of the Committee's general business activities, presentations by experts on rural healthcare workforce related issues, and discussion sessions specific for the development of recommendations to be addressed in the Eighth Annual ACICBL Report.

Agenda items are subject to change as dictated by the priorities of the Committee.

Supplementary Information: The ACICBL will meet on Wednesday, September 10 and Thursday, September 11, 2008 from 11 a.m. to 4 p.m. (EST) via Intercall LiveMeeting Web conference. To join online, click the link below. Once connected call the number below and use the same conference ID to be connected to the call. If you have not joined an Intercall LiveMeeting Web conference before, please log in 20 minutes before the meeting as you may need to install an Intercall reader to access the Web conference.

Meeting Link: https://psa.on.raindance.com/confmgr/public_unsched.jsp?confId=7829159.

Meeting Phone #: (888) 272–7337.

Conference ID: 7829159.

Meeting Subject: HRSA Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Moderator: Ashley Golden

Moderator E-mail: a_golden@team-psa.com.

For Further Information Contact: Anyone requesting information regarding the Committee should contact Louis D. Coccodrilli, Designated Federal Official for the ACICBL, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 9–36, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–6950 or *lcoccodrilli@hrsa.gov*. Marie Ulysse, HRSA Scholar, can also be contacted for inquiries at (301) 443–6529 or *mulysse@hrsa.gov*.

Dated: August 4, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–18393 Filed 8–8–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Prevalence and Incidence of HIV Molecular Variants and Their Correlation With Risk Behaviors and HIV Treatment in Brazilian Blood Donors

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 29, 2008, pages 30951–30952 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: The Prevalence and Incidence of HIV Molecular Variants and Their Correlation With Risk Behaviors and HIV Treatment in Brazilian Blood Donors. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Establishing and monitoring viral prevalence and incidence rates, and identifying risk behaviors for HIV incidence among blood donors, are critical to assessing and reducing risk of HIV transmission through blood transfusion. Identifying donation samples from donors with recent HIV infection is particularly critical as it enables characterization of the viral subtypes currently transmitted within the screened population and hence most likely to ''break-through'' routine screening measures (i.e., peri-seroconversion window period donations). Molecular surveillance of incident HIV infections in blood donors not only characterizes genotypes of recently infected donors for purposes of blood safety, but also enables documentation of the rates of primary transmission of anti-viral drug resistant strains in the community, serving a public health role in identifying new HIV infections for anti-retroviral treatment. Both a prospective surveillance and a case-control design are proposed to enroll all eligible HIV seropositives detected at three blood centers in Brazil (São Paulo, Belo Horizante, and Recífe) plus a satellite center in Rio de Janeiro. A comparison of epidemiological risk profiles will be made between the seropositive donors and a group of randomly selected seronegative donors.

There are three study aims. Laboratory studies (LS–EIA testing and sequencing of pol region) on linked specimens from all enrolled HIV cases, will allow for estimation of HIV prevalence and incidence relative to genotype and putative route of infection. Data derived from molecular genotyping, including drug resistant genotypes, will be provided, along with counseling, to all enrolled HIV positive donors to facilitate their clinical care via referral to the Brazilian national HIV treatment system. Our findings will be compared to trends in prevalence, incidence and molecular variants from studies of the general population and high risk populations in Brazil, thus allowing for broad monitoring of the HIV epidemic in Brazil and assessment of the impact of donor selection criteria on these parameters. Finally, HIV cases and a group of controls, through responses to a questionnaire, will provide data on HIV risk behaviors among prospective blood donors. This HIV risk behavior data will be used as covariates in the molecular surveillance analyses described above, as well as aid in assessing whether modifications may be needed to Brazil's routine blood center operational donor screening questionnaire.

The study participants will return to their local blood center for the administration of an informed consent form, explaining the confidential nature of the research study as well as the risks and benefits to their participation. Once enrolled, they will be asked to complete the self-administered risk factor questionnaire. In addition, a small blood sample will be collected from each HIV seropositive participant to be used for the genotyping and drug resistance testing. The results of the drug resistance testing will be communicated back to the seropositive participants during an in-person counseling session at the blood center.

Defining prevalence and incidence in blood donors and residual risk of HIV transmission by transfusions may lead to new regulations and blood safety initiatives in Brazil. The data can be used to project the yield, safety impact and cost effectiveness of implementing enhanced testing strategies such as combination antigen-antibody assays and/or NAT. Determination of HIV risk factors in donors (first time versus repeat donor status; volunteer versus replacement status; demographics and risk behaviors) will support policy discussions over strategies to recruit the safest possible donors in Brazil. The findings from this project will also complement similar monitoring of HIV prevalence, incidence, transfusion risk and molecular variants in the U.S. and other funded international REDS–II sites, thus allowing direct comparisons of these parameters on a global level.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Adult Blood Donors. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.40 (including administration of the informed consent form and questionnaire completion instructions); and *Estimated Total Annual Burden Hours Requested:* 800. The annualized cost to respondents is estimated at: $5,200 (based on $6.50 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Etimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
2,000	1	0.40	800

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 9144, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call 301–435–0065, or E-mail your request to *nemog@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 1, 2008.

George Nemo,

Project Officer, NHLBI, National Institutes of Health.

[FR Doc. E8–18491 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

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 property.

Name of Committee: Advisory Committee to the Director, NIH.

Date: August 15, 2008.

Time: 2 p.m. to 3 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: Penny Burgoon, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 114, Bethesda, MD 20892, (301) 451–5870, *burgoonp@od.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.

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/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 5, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18494 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–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, Oncology Area.

Date: September 8, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: September 15–16, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: September 22–23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *chatterrm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18272 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Initial Review Group; Subcommittee F—Manpower & Training.

Date: September 30–October 1, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel Washington National Airport, 1480 Crystal Drive, Arlington, VA.

Contact Person: Lynn M. Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Manpower & Training Grants.

Date: September 30, 2008.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Sonya Roberson, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892, 301–594–1182, *robersos@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Molecular Oncology P01.

Date: October 15–16, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael B. Small, PhD, Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892–8328, 301–402–0996, *smallm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Technologies for Molecular Analysis of Cancer.

Date: October 15–16, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Jeffrey E. Declue, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cellular & Tissue Biology P01.

Date: October 15–16, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8139, Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Application of Emerging Technologies & Sample Prep for Cancer Research.

Date: October 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Marvin L .Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 5, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18488 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special

Emphasis Panel, CM–9 (01) Cryopreservation of Germplasm.

Date: October 1, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Hilton Washington DC/Rockville Hotel, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bonnie Dunn, PhD., Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Democracy Blvd., Dem. 1, ROOM 1074, MSC 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov.*

Name of Committee: National Center for Research Resources Initial, Review Group Comparative Medicine Review Committee.

Date: October 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John R. Glowa, PhD., Scientific Review Officer, National Center for Research Resources, OR, National Institutes Of Health, 6701 Democracy Blvd., 1 Democracy Plaza, ROOM 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, STRB SEP.

Date: October 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha F. Matocha, PhD., Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892, 301–435–0810, *matocham@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, RCMI SEP.

Date: October 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Steven Birken, PhD., Scientific Review Officer, Senior Research Scientist, Department of Medicine, College of Physicians & Surgeons, Columbia University, 630 W. 168th Street, B 1006, New York, NY 10032, (212) 305–5755, *sb18@columbia.edu.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, INBRE SEP.

Date: October 16–17, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John R. Glowa, PhD., Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1078—MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *gIowaj@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biotechnology Review 2008–02.

Date: October 28–29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Steven Birken, PhD., Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0815, *birkens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18269 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings 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 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 Institutes of Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 24, 2008.

Open: 8:30 a.m. to 11:45 a.m.

Agenda: To present the Director's Report and other scientific Presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PHD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases, Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases, Subcommittee.

Date: September 24, 2008.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PHD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases, Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: September 24, 2008.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PHD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases, Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 24, 2008.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PHD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs and hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18250 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical; Research Review Subcommittee.

Date: October 20–21, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Philippe Marmillot, PhD., Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 635 Fishers Lane, Rm. 3045, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18251 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 22–23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Tysons Corner, 1960 Chain Bridge Road, Mclean, VA 22102.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18252 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee.

Date: October 14–15, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L. Foster, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3042 Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18253 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: November 13–14, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18254 Filed 8–8–08; 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 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 of Allergy and Infectious Diseases, Special Emphasis Panel NIAID Clinical Trial Planning (R34) Grants (DMID).

Date: September 2, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Barney Duane Price, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 3139, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 451–2592, *pricebd@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel NIAID Clinical Trial Planning (R34) Grants (DAIDS).

Date: September 2, 2008.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Barney Duane Price, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 3139, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2592, *pricebd@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel Infectious Diseases, Transmission in the Developing World.

Date: September 3, 2008.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700 B Rockledge Drive, 3259, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Edward W. Schroder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550.

(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: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18270 Filed 8–8–08; 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, R13 Scientific Conference Grants.

Date: August 20, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Office of Scientific Review, Building 45, Room 3AN18, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Weidman, PhD, Scientific Review Officer, Office of Scientific

Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.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. 93.375, 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: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18271 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging.

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 Aging.

Date: September 24–25, 2008.

Closed: September 24, 2008, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Open: September 25, 2008, 8 a.m. to 2:15 p.m.

Agenda: Call to order and reports from the Task Force Minority Aging Research Report; Working Group on Program Report; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: September 25, 2008, 2:15 p.m. to 2:45 p.m.

Agenda: To review and evaluate review of the Scientific Director.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute on Aging, Office Of Extramural, Activities Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov*.

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18273 Filed 8–8–08; 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 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 of Allergy and Infectious Diseases, Special Emphasis Panel, R25 Science Education Awards.

Date: August 27, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive 3145, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3145 MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel, Host Response to Pathogens.

Date: September 17, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3120, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@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: July 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18274 Filed 8–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Matching Requirements for Specific SAMHSA Discretionary Grant Funding Opportunities

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

The PHS Act states the Secretary may require non-Federal matching funds to ensure the institutional commitment to

the projects funded under grant through cash or in kind donations from public or private entities including plant, equipment, or services.

ACTION: Notice of proposed matching requirements for specific SAMHSA discretionary grant funding opportunities.

SUMMARY: In fiscal year 2009, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to require matching funds for some discretionary grant funding opportunities within the Programs of Regional and National Significance as described in the President's Fiscal Year (FY) 2009 Budget Request. This notice describes the specific FY 2009 funding opportunities for which matching is proposed. We understand that some grantees could experience initial difficulty with the matching requirements. The goal of this solicitation is to seek comment so that we can design these activities to assist grantees in lessening these challenges over time.

DATES: Submit written comments on this proposal within 60 days from the date of publication.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA proposed matching requirements to Shelly Hara, Office of Policy, Planning and Budget, SAMHSA, by fax (240) 276–2220 or by e-mail (*matching@samhsa.hhs.gov*). Please include a phone number in your correspondence so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Shelly Hara, OPPB, SAMHSA, by fax (240) 276–2220 or e-mail (*matching@samhsa.hhs.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this in your correspondence and provide a telephone number where you can be reached between 8:30 a.m. and 5 p.m., Eastern Standard Time.

SUPPLEMENTARY INFORMATION: SAMHSA has found that matching requirements assist grant communities in sustaining activities over the long term, help communities leverage resources (i.e., increasing the impact of grant-funded activities), and promote sustainability beyond the term for which Federal grant funding is provided. The FY 2009 President's Budget for SAMHSA includes matching requirements for several of SAMHSA's discretionary grant programs. Through matching requirements, grantees in these programs may be required to match the Federal dollars of the grant award with their own funds and resources. This could include cash and/or in-kind contributions from State and local government, foundations, private non-profit and/or for-profit organizations. See below for a description of each program and the proposed matching requirements.

Although matching requirements have not been used extensively in SAMHSA's discretionary grant programs, statutory matching requirements in certain SAMHSA grant programs have yielded some promising results with regard to sustainability and leveraging resources:

- A sustainability study of grantees funded between 1993 and 1995 through the Center for Substance Abuse Treatment's (CSAT's) Residential Women and Children and Pregnant and Postpartum Women (RWC/PPW) program found that a majority of grantees met with some success in sustaining their programs in one form or another beyond the end of Federal funding. The study identified several factors that were positively associated with sustainability. A match requirement may encourage grantees to engage in some of these activities, including early and careful planning for sustainability and developing relationships with other potential funders.
- The Center for Mental Health Services' (CMHS') Comprehensive Community Mental Health Services for Children program, which funds interagency, community-based systems of care, requires that grantees provide matching funds through a graduated approach, with an increasing match requirement over time. For example, in the fifth and sixth year of the grant, matching is not less than $2 for each $1 of Federal funds. Some grantees have reported that matching requirements contribute to community sustainability efforts for systems of care. For sites funded in 1993 and 1994 and assessed for sustainability five years after funding, 80% of sites achieved sustainability.

SAMHSA understands that some Tribes and smaller organizations and communities may have some difficulties in meeting initial match requirements. However, we have included some alternatives to address these challenges, such as seeking a postponement of the matching requirement in the first year, with an increased match in the following year. Matching elements help ensure current efforts are continued in the future.

When matching requirements are included in a program, grantees must provide non-Federal funds in cash or in-kind, fairly evaluated to match the Federal funds provided through the grant award. The specific rate of the match varies from program to program and may vary over time. Matching funds must meet the same test of allowability as costs charged to Federal grants. Sources of matching funds include State and local governmental appropriations (non-Federal), grants awarded by foundations, and funding provided by other private non-profit or for-profit organizations. In-kind contributions may include facilities, equipment, or services used in direct support of the project.

SAMHSA is seeking comment on a proposed 20% matching requirement (i.e., $2 for every $10 in Federal grant funds) for the first year with a graduated match in the succeeding years for the following programs in the FY 2009 President's budget:

- A new Center for Substance Abuse Prevention (CSAP) Targeted Capacity Expansion program to help communities address emerging prevention needs identified by States and local communities. It is expected that $7 million of Federal funds could support 14 new grants to be awarded to local governments, community-based organizations, and tribal entities. These grants are expected to expand or enhance a community's ability to provide rapid, strategic, comprehensive, and integrated prevention programs, practices, and strategies to specific, well-documented emerging needs.
- A new Center for Mental Health Services (CMHS) Targeted Capacity Expansion program to help communities address emerging mental health needs identified by local communities. It is expected that $7.3 million of Federal funds could support 14 new grants to be awarded to State governments, local governments, communities, and tribal entities. These grants are expected to expand or enhance a community's ability to provide rapid, strategic, comprehensive, and integrated responses to specific, well-documented mental health capacity problems, including technical assistance.

The Center for Substance Abuse Treatment (CSAT) Screening, Brief Intervention, Referral, and Treatment (SBIRT) program for States, territories, Federally recognized Tribes and tribal organizations. The SBIRT program has been in existence since FY 2003. The purpose of the program is to integrate screening, brief intervention, referral, and treatment services within general medical and primary care settings.

SAMHSA also seeks public comment on the following questions related to the matching requirements:

• What benefits would you expect as a result of including a matching requirement in the programs listed above?

• How will the matching requirement increase the sustainability of the grant projects funded through these programs?

• How will the matching requirement increase the services supported through the grant projects funded through these programs?

• What other benefits can be expected?

• What challenges would you anticipate as a result of including a matching requirement in the programs listed above? What suggestions do you have to help minimize those challenges?

—How would the benefits and challenges of the matching requirement change if the matching requirement were higher (e.g., 25% in year 1 and increasing in subsequent years)?

—What is the highest point at which the match would be supportable for you/your organization?

—At what level (i.e., percent of the grant) would the cost of a matching requirement become a barrier to applying for a grant from SAMHSA?

• As an applicant, would you be interested in a provision that would allow you to choose to defer the matching requirement in the first year of the grant, with an offsetting increased match in later years of the grant? What are the benefits and challenges of such an approach?

• What other options for a matching requirement (e.g., different percentages) would you recommend that SAMHSA consider?

Toian Vaughn,

Public Health Analyst, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E8–18473 Filed 8–8–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1771–DR]

Illinois Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1771–DR), dated June 24, 2008, and related determinations.

DATES: *Effective Date:* July 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 2008.

Greene County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18437 Filed 8–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1770–DR]

Nebraska; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1770–DR), dated June 20, 2008, and related determinations.

DATES: *Effective Date:* July 29, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 20, 2008.

Holt County for Individual Assistance (already designated for Public Assistance.)

Wheeler County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs: 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18424 Filed 8–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1781–DR]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–1781–DR), dated July 31, 2008, and related determinations.

DATES: *Effective Date:* July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 31, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Idaho resulting from flooding during the period of May 15 to June 9, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Douglas G. Mayne, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Idaho have been designated as adversely affected by this declared major disaster:

Kootenai and Shoshone Counties for Public Assistance.

All counties within the State of Idaho are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18435 Filed 8–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1766–DR]

Indiana; Amendment No. 15 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

DATES: *Effective Date:* July 29, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the President's June 30, 2008, amended declaration authorizing Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs under the Public Assistance program, the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center has established that the rivers in the State of Indiana, which have experienced historical flooding, fell below flood stage on June 23, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18432 Filed 8–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* July 29, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the President's June 30, 2008, amended declaration authorizing Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs under the Public Assistance program, the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center has established that the rivers in the State of Missouri, which have experienced historical flooding, fell below flood stage on July 18, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially

Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18438 Filed 8–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1780–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1780–DR), dated July 24, 2008, and related determinations.

DATES: *Effective Date:* July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 24, 2008.

Cameron, Hidalgo, and Willacy Counties for Individual Assistance and debris removal (Category A) under the Public Assistance program (already designated for emergency protective measures [Category B], including direct Federal assistance, under the Public Assistance program.)

Aransas, Bexar, Brooks, Calhoun, Jim Wells, Kenedy, Kleberg, Nueces, Refugio, San Patricio, Starr, and Victoria Counties for debris removal (Category A) under the Public Assistance program (already designated for emergency protective measures [Category B], including direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18440 Filed 8–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is inviting comments on collection of information that we have sent to the Office of Management and Budget (OMB) for review and approval. The Information Collection Request (ICR) concerns the paperwork requirements for the National Spatial Data Infrastructure, Cooperative Agreements Program (NSDI CAP) and describes the nature of the collection and the estimated burden and cost.

DATES: You must submit comments on or before September 10, 2008.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail [*OIRA_DOCKET@omb.eop.gov*]; or fax (202) 395–6566; and identify your submission as 1028–NEW. Please also submit a copy of your comments to Phadrea Ponds, U.S.G.S. Information Collections Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, NSDI CAP in the subject line.

FOR FURTHER INFORMATION PLEASE CONTACT: To request additional information concerning this ICR, contact Brigitta Urban-Mathieux, by mail NSDI CAP Coordinator, Federal Geographic Data Committee, U.S. Geological Survey, MS 590 National Center, Reston, VA 20192 or by telephone at (703) 648–5175.

SUPPLEMENTARY INFORMATION:

Title: National Spatial Data Infrastructure Cooperative Agreements Program (NSDI CAP).

OMB Control Number: 1028–NEW.

Abstract: To date, the NSDI CAP awards have created collaborations at all levels of government, developed an understanding of geospatial information in organizations and disciplines new to the NSDI, provided seed money to enable geospatial organizations to participate in the national effort to implement the NSDI, promoted the development of standardized metadata in hundreds of organizations, and funded numerous implementations of OGC Web Mapping Services and Web Feature Services. The program is open to State, local and tribal governments, academia, and commercial and non-profit organizations and provides small seed grants to initiate sustainable on-going NSDI implementations. The program emphasizes partnerships, collaboration and the leveraging of geospatial resources in achieving its goals. Since the funding level is limited, organizations must compete to be awarded funds. Respondents are submitting proposals to acquire funding for projects to help build the infrastructure necessary for the geospatial data community to effectively discover, access, share, manage, and use digital geographic data.

The NSDI consists of the technologies, policies, organizations, and people necessary to promote cost-effective production, and the ready availability and greater utilization of geospatial data among a variety of sectors, disciplines, and communities. Specific NSDI areas of emphasis include: metadata documentation, clearinghouse establishment, framework development, standards implementation, and geographic information system (GIS) organizational coordination.

This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency of Collection: On occasion.

Affected Public: Private sector; State, local, and tribal governments; Academia; Non-profit organizations.

Respondent Obligation: Voluntary (necessary to receive benefits).

Estimated Number and Description of Respondents: We expect to receive approximately 80 proposals during the grant application process. We anticipate issuing 25 grants per year. The program is open to State, local and tribal governments, academia, and commercial and non-profit organizations.

Estimated Number of Responses: Approximately 80 applications and 50 reports per year.

Estimated Completion Time per Response: Based on comments received during the FR Notice 60 day comment period, we have adjusted our original burden request by 7 hours from 18 to 25 hours per respondent. We expect to receive approximately 80 applications, taking each applicant approximately 25 hours to complete, totaling 2,000 burden hours. We anticipate awarding an average of 25 grants per year. The 25 award recipients are required to submit 2 reports: an interim 6 months after the start of the project and a final report on or before 90 working days after the expiration of the agreement. We estimate that it will take approximately 5 hours to complete and submit the reports totaling 250 hours. Therefore, the annual burden for report preparation is 250 hours. We estimate that the total burden for this collection will be 2,250 hours.

Annual Burden Hours: 2,250.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: To comply with the public consultation process, on November 21, 2007, we published a **Federal Register** notice (72 FR 65592) announcing our intent to submit this information collection to OMB for approval. In that notice we solicited public comments for 60 days, ending on January 22, 2008. We did not receive any public comments in response to the notice.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Phadrea D. Ponds 970–226–9445.

Dated: August 5, 2008.

Steve Hammond,

Deputy Chief, Science Information and Education Office.

[FR Doc. E8–18448 Filed 8–8–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

Renewal of Information Collection for Source Directory Publication

AGENCY: Indian Arts and Crafts Board.

ACTION: Notice and request for comments.

SUMMARY: The Indian Arts and Crafts Board (IACB) collects information to identify and revise listings for the *Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses (Source Directory).* In compliance with the Paperwork Reduction Act of 1995, the IACB has submitted a request for renewal of approval of this information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by September 10, 2008, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1085–0001). Also, please send a copy of your comments to Meridith Z. Stanton, Indian Arts and Crafts Board, U.S. Department of the Interior, MS 2058–MIB, 1849 C Street, NW., Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 208–5196, or by e-mail to *''iacb@ios.doi.gov''.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the *Source Directory* application or renewal forms, i.e., the information collection instruments, should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street, NW., MS 2528–MIB, Washington, DC 20240. You may also request additional information by telephone (202) 208–3773 (not a toll free call), or by e-mail to *(iacb@ios.doi.gov)* or by facsimile to (202) 208–5196.

SUPPLEMENTARY INFORMATION:

I. Abstract

The *Source Directory* of American Indian and Alaska Native owned and operated arts and crafts enterprises is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The *Source Directory* is a listing of American Indian and Alaska Native owned and operated arts and crafts businesses that may be accessed by the public on the Indian Arts and Crafts Board's Web site *http://www.iacb.doi.gov.*

The service of being listed in this directory is provided free-of-charge to members of federally recognized tribes. Businesses listed in the *Source Directory* include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately-owned-and-operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately owned-and-operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the *Source Directory* are arranged alphabetically by State.

The Director of the Board uses this information to determine whether an individual or business applying to be listed in the *Source Directory* meets the requirements for listing. The approved

application will be printed in the *Source Directory*. The *Source Directory* is updated annually to include new businesses and to update existing information.

II. Method of Collection

To be listed in the *Source Directory,* interested individuals and businesses must submit: (1) A draft of their business information in a format like the other *Source Directory* listings, (2) a copy of the individual's or business owner's tribal enrollment card; and for businesses, proof that the business is organized under tribal, state, or federal law; and (3) a certification that the business is an American Indian or Alaska Native owned and operated cooperative, tribal enterprise, or nonprofit organization, or that the owner of the enterprise is an enrolled member of a federally recognized American Indian Tribe or Alaska Native group.

The following information is collected in a single-page form that is distributed by the Indian Arts and Crafts Board. Although listing in the *Source Directory* is voluntary, submission of this information is required for inclusion in the *Directory.*

Information collected	Reason for collection
Name of business, mailing address, city, zip code (highway location, Indian reservation, etc.), telephone number and e-mail address.	To identify the business to be listed in the *Source Directory*, and method of contact.
Type of organization	To identify the nature of the business entity.
Hours/season of operation	To identify those days and times when customers may contact the business.
Internet Web site address	To identify whether the business advertises and/or sells inventory online.
Main categories of products	To identify the products that the business produces.
Retail or wholesale products	To identify whether the business is a retail or wholesale business.
Mail order and/or catalog	To identify whether the business has a mail order and/or catalog.
Price list information, if applicable	To identify the cost of the listed products.
For a cooperative or tribal enterprise, a copy of documents showing that the organization is formally organized under tribal, state or federal law.	To determine whether the business meets the eligibility requirement for listing in the *Source Directory.*
Signed certification that the business is an American Indian or Alaska Native owned and operated cooperative, tribal enterprise, or nonprofit organization.	To obtain verification that the business is an American Indian or Alaska Native owned and operated business.
Copy of the business owner's tribal enrollment card	To determine whether the business owner is an enrolled member of a federally recognized tribe.
Signed certification that the owner of the business is a member of a federally recognized tribe.	To obtain verification that the business owner is an enrolled member of a federally recognized tribe.

The proposed use of the information: The information collected will be used by the Indian Arts and Crafts Board:

(a) To determine whether an individual or business meets the eligibility requirements for inclusion in the *Source Directory,* i.e., whether they are either an American Indian or Alaska Native owned and operated cooperative, tribal enterprise, or nonprofit organization, or an enrolled member of a federally recognized American Indian Tribe or Alaska Native group; and

(b) To identify the applicant's business information to be printed in the *Source Directory.*

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 Office of Management and Budget control number. The IACB has submitted a request to OMB to renew its approval of this information collection for an additional three years. There are four types of application forms: (1) New businesses—group; (2) new businesses—individual; (3) businesses already listed—group; and (4) businesses already listed—individual. Each respondent will only be asked to complete one application form.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on May 19, 2008 (73 FR 28836). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity.

III. Data

(1) *Title: Source Directory* of American Indian and Alaska Native owned and operated arts and crafts businesses application and renewal forms.

OMB Control Number: 1085–0001.

Type of Review: Renewal of an existing collection.

Affected Entities: American Indian owned or operated arts and crafts businesses.

Estimated Annual Number of Respondents: 100.

Frequency of Response: Annual.

(2) *Annual reporting and record keeping burden.*

Total Annual Reporting per Respondent: 15 minutes.

Total Annual Burden Hours: 25 hours.

(3) *Description of the need and use of the information:* Submission of this information is required to receive the benefit of being listed in the Indian Arts and Crafts Board *Source Directory.* The information is collected to determine the applicant's eligibility for the service and to obtain the applicant's name and business address to be added to the online directory.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal

agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: August 6, 2008.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. E8–18490 Filed 8–8–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1910–BK; Group 41, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

Contact Information: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Army Corps of Engineers.

The land we surveyed are:

Fourth Principal Meridian, Illinois

T. 5 S., R. 7 W

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines and the resurvey of the lock and dam no. 24 acquisition boundary in Sections 26 and 35, Township 5 South, Range 7 West, of the Fourth Principle Meridian, in the State of Illinois, and was accepted August 4, 2008.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we accepted or dismissed all protests and they have become final, including decisions on appeals. Copies of the plat will be made available upon request and prepayment of the reproduction fees.

Dated: August 4, 2008.

Ronald J. Eberle,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–18436 Filed 8–8–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–200–1120–DD–241A]

Notice of Public Meeting, Twin Falls District Resource Advisory Council Meeting, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will meet as indicated below.

DATES: September 11, 2008. The Twin Falls District RAC meeting will begin at 9:30 a.m. (MST) and end no later than 4 p.m. at Grandstands Restaurant in Buhl, Idaho, located at 1003 Main Street. The public comment period for the RAC meeting will take place 10 a.m. to 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The Twin Falls District RAC business meeting agenda will include the following topics: Wood River Land Trust presentation, setting goals for 2009 RAC meetings, Wilderness Study Area discussion, and addressing how RAC members can better interpret Resource Management Plans. Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html.* All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: August 6, 2008.

Bill Baker,

District Manager.

[FR Doc. E8–18555 Filed 8–8–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–EU; N–77348; 8–08807; TAS:14X5232]

Notice of Realty Action: Direct Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer by non-competitive sale one parcel of public land totaling approximately 3.75 acres in the Las Vegas Valley to Nhu Thi Tran. The sale will be under the authority of the Southern Nevada Public Land Management Act of 1998 (Pub. L. 105–263, 112 Stat. 2343), as amended, (SNPLMA). The land will be offered non-competitively as a direct sale in accordance with the applicable provisions of Sections 203 and 209 of the Federal Land Policy Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), and BLM land sale and mineral conveyance regulations at 43 CFR Parts 2710 and 2720 at not less than the appraised fair market value (FMV) of the parcel.

DATES: Interested parties may submit written comments regarding the proposed sale until September 25, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Brenda Wilhight, (702) 515–5172.

SUPPLEMENTARY INFORMATION: The following described public land, parcel N–77348, is located southeast of Las Vegas, Nevada. There is no physical and legal access to the parcel. The parcel is legally described as:

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E.,

sec. 28, NW¼SE¼SE¼SW¼,
N½NE¼SW¼SE¼SW¼.

The area described contains 3.75 acres, more or less.

This parcel of public land is proposed for sale to Nhu Thi Tran at no less than the FMV as determined by the authorized officer after appraisal. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV. The FMV of the parcel to be offered for sale is $6,800. The appraisal report is available for public review at the BLM Las Vegas Field Office.

Nhu Thi Tran is requesting to purchase the parcel of public lands surrounded by her private land and U.S. Highway 95. There is no legal access to the parcel from the highway or otherwise.

Federal regulations governing sales of public land at 43 CFR 2711.3–3 state that direct sale (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by direct sale. Examples include, but are not limited to the adjoining ownership pattern and access indicates a direct sale is appropriate. Once the authorized officer has determined that the lands will be offered by direct sale and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be made by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management as outlined in 43 CFR 2711.3–1(c) of this subpart. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

This federal parcel is bordered on three sides by private lands owned by Nhu Thi Tran and on the fourth side by U.S. Highway 95. The subject parcel contains 3.75 acres and has .9 usable acre after deducting the U.S. Highway 95 right-of-way. Due to the parcel's triangular shape, lack of access, encumbrances with high voltage power lines and the freeway right-of-way, there is minimal use and value. Based on the lack of public use and value, Tran's land surrounding the property, and because no public ingress and egress has been provided to these lands, the authorized officer has concluded that a direct sale is warranted.

This sale is in conformance with the Las Vegas Resource Management Plan, approved October 5, 1998. BLM has determined that the sale action conforms to the land use plan decision LD–1 under the authority of FLPMA. The land contains no other known public values. The parcel has not been identified for transfer to the State or any other local government or non-profit organization. The environmental assessment, master title plat map, and approved appraisal report dated July 17, 2008, covering the proposed sale are available for review at the Las Vegas Field Office.

Certain minerals from this parcel will be reserved to the United States in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999. Minerals to be reserved to the United States are all leasable and all saleable minerals. Acceptance of the offer to purchase will constitute an application for conveyance of the ''no known value'' mineral interests. In conjunction with the final payment, the applicant for ''no known value'' mineral interests will be required to pay a $50 non-refundable filing fee for processing the conveyance of the mineral interest which will be sold simultaneously with the surface interests.

Terms and Conditions of Sale: The patent issued would contain the following numbered reservations, covenants, terms and conditions:

1. All leasable and saleable mineral deposits are reserved to the United States, its permittees, licensees, and lessees together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. Those rights for federal highway purposes reserved to the Federal Highway Administration, its successors and assigns, by right-of-way No. N–38756, pursuant to the Act of August 27, 1958 (23 U.S.C. 317(A));

4. The parcel is subject to valid existing rights;

5. Those rights for transmission line and fiber optic line purposes which has been granted to Nevada Power Co., its successors and assigns, by right-of-way Nos. N–43249 and N–84708, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of federal, state, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by federal and state environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; (6) Or natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and;

7. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

The sale parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans. Upon publication of this notice of realty action and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in

accordance with 43 CFR 2807.15 and 2886.15. Encumbrances that may appear in the BLM files for the parcel proposed for sale are available for review during business hours, 7:30 a.m.—4:30 p.m. PST, Monday through Friday, at the Las Vegas Field Office.

Maps delineating the individual proposed sale parcel and current appraisal for the parcel are available for public review at the Las Vegas Field Office.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential use of the parcel of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable federal, state and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Under 43 CFR 2711.3–1 (c) and (d), a deposit of not less than 20 percent of the federally approved FMV must be submitted, 30 days from the date of the sale offer, by 4:30 p.m. PST at the Las Vegas Field Office. Payment must be made in the form of certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the DOI–Bureau of Land Management.

Failure to submit the deposit will result in forfeiture of the sale offer. Remainder of the purchase price must be paid within 180 calendar days following the date of the sale offer. Failure to pay the full price within the 180 days will disqualify the sale offer and cause the entire 20 percent deposit to be forfeited to the BLM. No exceptions will be made. BLM cannot accept the full price at any time following the 180th day after the sale offer. Payment must be received in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the DOI–Bureau of Land Management. Personal checks will not be accepted. Arrangements for electronic fund transfer to BLM for the balance due shall be made a minimum of two weeks prior to the date you wish to make payment.

The BLM may accept or reject any or all offers to purchase any parcel, or may withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable laws or is determined to not be in the public interest.

Public Comments: The subject parcel of land will not be sold prior to the expiration of 60 days from the date of publication of this notice of realty action. For a period until September 25, 2008, interested parties may submit written comments to the Las Vegas Field Office. Only written comments submitted by postal service or overnight mail will be considered as properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR part 2711.

Dated: July 29, 2008.

Mary Jo Rugwell,

Las Vegas Field Manager.

[FR Doc. E8–18449 Filed 8–8–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU81324]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases, Utah

August 4, 2008.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), Mountain Home Petroleum Inc. timely filed a petition for reinstatement of oil and gas lease UTU81324 for lands in Sanpete County, Utah, and it was accompanied by all required rentals and royalties accruing from July 1, 2008, the date of termination.

FOR FURTHER INFORMATION CONTACT: Kent Hoffman, Deputy State Director, Division of Lands and Minerals at (801) 539–4080.

SUPPLEMENTARY INFORMATION: The Lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective July 1, 2008, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Kent Hoffman,

Deputy State Director, Division of Lands and Minerals.

[FR Doc. E8–18428 Filed 8–8–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 26, 2008. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 26, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

El Paso County

Ponderosa Lodge, (Jules Jacques Benois Benedict Architecture in Colorado MPS) 6145 Shoup Rd., Colorado Springs, 08000829

DISTRICT OF COLUMBIA

District of Columbia

Eldbrooke United Methodist Church, (Tenleytown in Washington, D.C.: 1770–1941, MPS) 4100 River Rd., Washington, D.C., 08000840

Methodist Cemetery, The, (Tenleytown in Washington, D.C.: 1770–1941, MPS) Murdock Mill Rd. between River Rd. and 42nd St., Washington, D.C., 08000839

GEORGIA

Brooks County

Harris-Ramsey-Norris House, 1004 W. Lafayette St., Quitman, 08000832

Douglas County

Pine Mountain Gold Mine, 1881 Stockmar Rd., Villa Rica, 08000834

Marion County

Pasaquan, Eddie Martin Rd., Buena Vista, 08000833

Thomas County

Dewey City Historic District, Roughly bounded by Martin Luther King, Jr. Dr., Wolf St., Culpepper St., Burns St., and Felix St., Thomasville, 08000835

ILLINOIS

Cook County

Ravenswood Manor Historic District, Between Sacramento Ave., N. branch of the Chicago river, and alleys S. of Lawrence Ave. and N. of Montrose Ave., Chicago, 08000836

LOUISIANA

Lafourche Parish

Lefort House, 1302 Hwy. 1, Thibodaux, 08000843

MICHIGAN

Newaygo County

Croton Dam Mound Group, Address Restricted, Croton, 08000846

Washtenaw County

Delhi Bridge, E. Delhi Rd. over Huron River, Scio, 08000844

MISSOURI

Jackson County

Colonnade Apartment Building at 4302 Oak Street, (Colonnade Apartment Buildings of Kansas City, MO, MPS) 4302 Oak St., Kansas City, 08000857

Marion County

Culbertson-Head Farmstead, 7178 Co. Rd. 402, Palmyra, 08000838

NEW JERSEY

Morris County

Campfield, Dr. Jabez, House, 5 Olyphant Pl., Morristown, 08000837

OKLAHOMA

Canadian County

Lassen, Henry, House, 605 S. Hoff, El Reno, 08000852

Jackson County

Wichita Falls & Northwestern Railroad Passenger Depot, 523 S. Main St., Altus, 08000851

Pittsburg County

Rock Creek Bridge, Carries Co. Rd. NS–409.7 over Rock Creek, Blanco, 08000853

Tulsa County

City Veterinary Hospital, 3550 S. Peoria Ave., Tulsa, 08000848

Hawk Dairies, 2415 E. 11th St. S., Tulsa, 08000854

Mayo Motor Inn, 416 S. Cheyenne, Tulsa, 08000850

Mount Zion Baptist Church, 419 N. Elgin E. Ave., Tulsa, 08000847

Tulsa Monument Company, 1735 E. 11th St. S., Tulsa, 08000849

PENNSYLVANIA

Allegheny County

Mexican War Streets Historic District (Boundary Increase), Roughly bounded by Armandale St., Carrington St., Charlick Way, Reddour St., and W. N. Ave., Pittsburgh, 08000845

PUERTO RICO

San Juan Municipality

Martin Pena Bridge, (Historic Bridges of Puerto Rico MPS) State Rd. 25, km.8, Santurce Ward, San Juan, 08000856

VERMONT

Windsor County

Pollard Block, 7 Depot St., Cavendish, 08000855

VIRGINIA

Richmond Independent city

H.L. Lawson & Son Warehouse, 631 Campbell Ave. SE., Roanoke, 08000830

Scott County

Bush Mill, 1162 Bush Mill Rd., Nickelville, 08000831

WISCONSIN

Wood County

Columbia Park Band Shell, 201 W. Arnold St., Marshfield, 08000842

Weinbrenner Shoe Factory, 305 W. 3rd St., Marshfield, 08000841

[FR Doc. E8–18418 Filed 8–8–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0024]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Report of Firearms Transactions.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Firearms Transactions.

(3) *Form Number:* ATF F 5300.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The information collection documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations, and establishes the person(s) involved in the transactions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 1 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–18389 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0031]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Import Branch, 244 Needy Road, Martinsburg, West Virginia 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The records are of imported items that are on the United States Munitions Import List. The importers must register with ATF and must file an intent to import specific items as well as certify to the Bureau that the items were in fact received. The records are maintained at the registrant's business premises where they are available for inspection by ATF officers during compliance inspections or criminal investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 5 hours to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–18390 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0060]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Firearms Disabilities for Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Disabilities for Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The nonimmigrant alien information will be used to determine if a nonimmigrant alien is eligible to purchase, obtain, possess, or import a firearm. Nonimmigrant aliens also must maintain the documents while in possession of firearms or ammunition in the United States for verification purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 12,100 respondents will take an estimated 6 minutes to report the information.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,210 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–18391 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0067]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Firearms manufacturers records are permanent records of all firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,694 respondents will take 3 minutes to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 76,611 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–18392 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Application for Explosives License or Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 110, page 32357 on June 6, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The form has been revised to include the new classes (types) of explosives for manufacturers, dealers, importers and users of explosives. The current type codes are obsolete. ATF will now categorize explosives licenses and permits by only six major classes. The classes are: Manufacturer, Dealer, Importer, User, User-Limited and Type 60. The form will still capture the types of explosives materials being manufactured, imported, acquired and used by explosives licensees and permittees, however, they will no longer be classified by type code.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 10,000 respondents, who will complete the form within approximately 1 hour and 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 15,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 6, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–18512 Filed 8–8–08; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 7–08]

Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Thursday, August 21, 2008, at 10:30 a.m.

Subject Matter: Issuance of Proposed Decisions, Amended Proposed Decisions, and Orders in claims against Albania.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. E8–18601 Filed 8–7–08; 4:15 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0240]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of New Information Collection: 2008 Census of State and Local Law Enforcement Agencies.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume, 73, Number 108, page 31883 on June 4, 2008, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the pubic and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Revision of a Currently Approved Collection, Census of State and Local Law Enforcement Agencies.

(2) *The Title of the Form/Collection:* 2008 Census of State and Local Law Enforcement Agencies.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* The form numbers are CJ–38S and CJ–38L, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* All State and local law enforcement agencies with at least 1 full-time or part-time sworn officer. This nationwide information collection will identify all State and local law enforcement agencies, their number of sworn and civilian employees, and the functions they perform. Additional information pertaining to issues of recruiting, hiring and retention will be gathered from a sample of agencies. The information collected will provide national counts of law enforcement employees, track national growth trends in law enforcement and identify agencies with recruitment and retention problems. Agencies with successful recruitment and retention records can be compared with those dealing with staff shortages to determine ways in which the recruitment and retention of sworn personnel can be improved in those agencies.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* An estimated 15,775 law enforcement agencies will complete 30-minute questionnaire (CJ–38S), and 3,225 agencies will complete a 90-minute questionnaire (CJ–38L).

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* The estimated public burden associated with this collection is 12,725 hours. (15,775 data collection forms completed at 30 minutes = 7,888 burden hours and 3,255 forms completed at 90 minutes each = 4,837 burden hours).

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 5, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–18416 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1486]

Proposed Chemical, Biological, Radiological, and Nuclear (CBRN) Protective Ensemble Standards for Law Enforcement and CBRN Protective Ensemble Certification Program Requirements

AGENCY: National Institute of Justice.

ACTION: Notice of Proposed Chemical, Biological, Radiological, and Nuclear (CBRN) Protective Ensemble Standards for Law Enforcement and CBRN Protective Ensemble Certification Program Requirements.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice will make available to the general public two draft documents: (1) A draft standard entitled, ''CBRN Protective Ensemble Standard for Law Enforcement'' and (2) a draft companion document entitled, ''NIJ CBRN Protective Ensemble Certification Program Requirements''.

The opportunity to provide comments on these two documents is open to industry technical representatives, public safety agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties.

Those individuals wishing to provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: The comment period will be open for 45 days beginning on August 11, 2008 and concluding on September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Casandra Robinson, by telephone at 202–305–2596 [**Note:** this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

Dated: August 5, 2008.

David W. Hagy,

Director, National Institute of Justice.

[FR Doc. E8–18417 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Gender Responsive Management and Practice Assessment (Facility Version)

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups or individuals who would like to enter into a cooperative agreement with NIC to work with an advisory team of experts on gender-informed policy and practice to complete the design and initial testing of a women offender policy and practice assessment protocol.

DATES: Applications must be received by 4 p.m. EDT on Friday, August 22, 2008.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First St., NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Only e-mailed applications which are submitted via *http://www.grants.gov* will be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web page at *http://www.nicic.gov*. Click on ''About Us'' then ''Cooperative Agreements'' for announcements. Hard copies of the announcement can be obtained by calling Pam Davison at 1–800–995–6423 ext. 3–0484 or e-mail *pdavison@bop.gov*.

All technical or programmatic questions regarding this solicitation should be directed to Maureen Buell, Correctional Program Specialist, National Institute of Corrections. She can be reached by calling 202–514–0121 or by e-mail at *mbuell@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background: Over 18 months, a team of researchers and practitioners outlined the essential domains of an assessment protocol for gender-responsive policy, programs and operations for women offenders. To date the domains address: Agency/Organizational Philosophy; External/System/Stakeholder Support; Leadership and Management; Supervision and Staffing; Assessment/Classification; Case Planning and Transitional Planning; Core Treatment Programs; Services; Facility/Site; Behavior Motivation/Discipline; Culture; and QA/Assessment. Goals of the Project in the Development Phase: __The intention of the protocol is to provide specific guidance to agencies seeking to improve their management and treatment of women offenders to improve outcomes. These outcomes may include: Improved risk and needs assessment; targeting of critical factors through case management that will reduce institutional misconduct; revocation and re-offending; and improved interaction between staff and women in custody settings.

The team that developed the draft protocol package will serve as the core advisory team working with the successful applicant to complete the assessment protocol package.

Scope of Work and Deliverables: NIC will award one cooperative agreement for a 12 month period to work closely with the advisory team to complete the design of the assessment protocol package.

The Advisory Group will provide a completed tool with methodology and scoring parameters. The Recipient will: Develop a user manual for the protocol (e.g., expanded definitions and citations);

Pilot the instrument in up to three agencies in jail and prison settings. (It is anticipated that site visits will be 2–3 days in length and teams will generally be 2-person teams.);

Participate in a series of conference calls (or on-line platforms such as a Web-Ex system event) with sites applying as pilot locations;

Develop a resource guide to assist with development of recommendations and post-assessment implementation of gender-responsive practices. (Examples to include model programs and emerging practices.);

Work with an advisory group (5–8 members) to conduct focus groups with experts on women offender policy and programs to get feedback on the instrument, its key domains and definitions, and readiness of the field to use such an instrument;

Develop recommendations for evaluator training and certification; and

Meet face-to-face with the advisory group on 1–2 occasions. (Additional meetings can be conducted via conference call and/or on-line platforms).

Specific Requirements: Required Expertise: The successful applicant will need the conceptual skills and management capacity to complete the protocol design and standardization, manage the testing of the instrument in pilot sites conducting focus groups, and incorporate all the feedback into a final assessment protocol package.

Application Instruction: Please prepare a cooperative agreement proposal that consists of no more than 10 double spaced pages, excluding statements of organizational capacity and summaries of the experiences and capabilities of key project staff. Please submit summaries of experience and expertise and not full curricula vitae. The proposal must list all persons who will be involved in the project, including their role within the organization related to this project, areas of expertise related to this project, and complete contact information.

The proposal must: Define project objectives and methodologies for achieving project goals in the 12 months' period.

Provide a budget narrative that defines the relative use of resources for the key objective areas.

Give at least one example of your experience or your team's experience in delivering each of the following: Design of tools to assess policies and programs in correctional settings; summarize research on women offender risk and needs assessments, program assessments and the like.

Application Requirements: Applications should be concisely written, typed double spaced and reference the ''NIC Application Number'' and Title provided in this announcement. The package must include: OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); and an outline of projected costs. The following additional forms must also be included: OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (available on *http://www.grants.gov*) And DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf*)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov*. If submitted in hard

copy, there needs to be an original and six copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Telephone Conference: A telephone conference will be conducted for persons receiving this solicitation and having a serious intent to respond on Friday, August 15 at 3 p.m. EDT. In the conference, the NIC project manager will respond to questions regarding the solicitation and expectations of work to be performed. Please notify Maureen Buell electronically by close of business (4 p.m. EDT) on Wednesday, August 13 regarding your interest in participating in the conference. You will be provided with a call-in number and instructions.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. The final budget and award amount will be negotiated between NIC and the successful applicant. NIC will fund one cooperative agreement for an estimated 12 month period for the development phase of this project. Funds may only be used for the activities that are linked to the desired outcomes of the project.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subject to a 3 to 5 person NIC and joint funding agency Review Process.

Number of Awards: One.

NIC Application Number: 08P06. This number should appear as a reference line in the cover letter, in box 4a of Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Resources: Link to draft protocol located at *http://www.nicic.org/WomenOffenders*.

Thomas J. Beauclair,

Deputy Director, National Institute of Corrections.

[FR Doc. E8–18420 Filed 8–8–08; 8:45 am]

BILLING CODE 4410–36–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Number: 3206–0193]

Comment Request for Review of a Revised Information Collection: OPM Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. OPM Online Form 1417, the Combined Federal Campaign (CFC) Information System form, collects information from the 247 local CFC campaigns to verify campaign results and collect contact information. Revisions to the form include clarifying edits to items numbered 2–6, 9 and 10 of the Campaign Results Total Page, the elimination of questions numbered 13–15 of the Campaign Results Total Page and the return of one question edited to collect pledge amounts designated specifically for federal emergency or disaster relief, if any, on the Campaign Results Total Page.

We estimate 247 online OPM Forms 1417 are completed annually. Each form takes approximately 20 minutes to complete. The annual estimated burden is 82.3 hours.

For copies of this proposal, contact Margaret A. Miller at (202) 606–2699 or FAX (202) 418–3251 or e-mail *mamiller@opm.gov.* Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Cherlynn Stevens,
Office of the Combined Federal Campaign,
U.S. Office of Personnel Management,
1900 E Street, NW., Room 5450,
Washington, DC 20415.

Brenda Aguilar,
OPM Desk Officer,
U.S. Office of Personnel Management,
OIRA,
Office of Management and Budget,
NEOB, NW.,
Room 10235,
Washington, DC 20503.

Howard Weizman,

Deputy Director.

[FR Doc. E8–18446 Filed 8–8–08; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58296; File No. SR–CBOE–2008–30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to the Hybrid Opening System

August 4, 2008.

I. Introduction

On June 5, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its Hybrid Opening System (''HOSS'') procedures to allow the Hybrid Agency Liaison (''HAL'') functionality to be available on the openings in designated classes. The proposed rule change was published for comment in the **Federal Register** on June 30, 2008.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE Rule 6.2B, ''Hybrid Opening System (''HOSS''),'' sets forth procedures for opening trading rotations for series trading on the CBOE Hybrid Trading System (''Hybrid''). The current HOSS method for opening chooses a single ''market clearing'' price that will leave unexecuted those bids and offers that cannot trade with each other.[4] However, one or more series of a class may not open if one of the following conditions is met: (1) No opening quote that complies with the legal width quote requirements of Rule 8.7(b)(iv) has been entered by at least one Market Maker appointed to the class (or by the Designated Primary Market-Maker or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57997 (June 20, 2008), 73 FR 36939.

[4] In determining the priority of orders and quotes to be traded, HOSS gives priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. *See* Rule 6.2B(c)(iv).

Lead Market-Maker, if applicable for the particular class) (the ''opening quote condition''); (2) the opening price is not within an acceptable range (as applicable for the particular class) compared to the lowest quote offer and the highest quote bid (the ''acceptable opening range condition''); or (3) the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders, quotes and market orders on the opposite side) (''market order imbalance condition'').

Under the current HOSS procedures, if the opening quote condition or acceptable opening range condition is present, the senior official in the Exchange's control room may authorize the opening of the affected series where necessary to ensure a fair and orderly market. If the acceptable opening range condition is present, HOSS will not open the series but will send a notification to market participants indicating the reason. If the market order imbalance condition is present, a notification will be sent to market participants indicating the size and direction (buy or sell) of the market order imbalance. HOSS will not open the series until the condition causing the delay is satisfied. HOSS will repeat the process until the series is open.[5]

CBOE proposes to amend the current HOSS procedures in CBOE Rule 6.2B to permit HAL functionality to be available on the openings in designated classes. HAL is a system for automated handling of electronically received orders that are not automatically executed upon receipt by Hybrid.[6] Under the proposed rule change, the Exchange could designate the classes in which HAL would be activated for HOSS openings. For such designated classes, additional steps would be automatically taken using HAL functionality to address the opening quote, acceptable opening range, and market order imbalance conditions, as well as to address instances where CBOE's opening trade would be at a price that is not the current national best bid or offer (the ''NBBO condition'').

In particular, CBOE proposes that for classes where HAL is activated for HOSS openings, the following procedures would apply if one of the following conditions is met:

(1) If the opening quote condition is present, HOSS would check to see if there is an NBBO quote on another market that falls within the acceptable opening range. If such an NBBO quote is present, the series would open and expose the marketable order(s) at the NBBO price. If such an NBBO quote is not present, HOSS would not open the series and would send a notification to market participants indicating the reason.

(2) If the acceptable opening range condition is present, HOSS would match orders and quotes to the extent possible at a single clearing price[7] within the acceptable opening range and then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

(3) If the market order imbalance condition is present, HOSS would match orders and quotes to the extent possible at a single clearing price and then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

(4) If the NBBO condition is present, HOSS would match orders and quotes to the extent possible at a single clearing price within the acceptable opening range or the NBBO price, whichever is better, and then expose the remaining marketable order(s) at the NBBO price.

The order exposure process in each of the above would be conducted pursuant to Rule 6.14, ''Hybrid Agency Liaison (HAL).'' Under the HAL process, marketable orders would be electronically exposed to all Market-Makers appointed to the relevant option class if not executed at a single clearing price.[8] For HOSS openings where HAL is used, this exposure period would afford Market-Makers appointed to the class an opportunity to match the widest price point within the opening range or the NBBO price, whichever is better. If at least one Market-Maker committed to trade any portion of the exposed marketable order(s) during the exposure period, the exposure period would end and an allocation period would commence. The Exchange would determine on a class-by-class basis the applicable exposure period (which would not exceed 1.5 seconds) and allocation period (which, when combined with the designated exposure period time—as opposed to an exposure period that is terminated early[9]—would not exceed a total of 3 seconds) that would be applicable where HAL is activated for HOSS openings.

At the conclusion of the allocation period, the order(s) would be filled in accordance with the allocation algorithm in effect for the class pursuant to Rule 6.45A or 6.45B. There would be no participation entitlement applicable to exposed orders, and response sizes are limited to the size of the exposed order for allocation purposes. If no responses are received or if there remains an unexecuted marketable order (or portion thereof), then the balance of the order would be booked if it is a limit order that is not marketable or processed in accordance with CBOE Rule 6.14(b)(i)–(ii).[10] In addition, for all classes, any remaining balance of opening contingency orders not executed via HAL on the opening would be automatically cancelled.[11] For single list classes, any remaining balance of

[5] *See* CBOE Rule 6.2B(f).

[6] *See* CBOE Rule 6.14 (governing the operation of HAL).

[7] In determining the priority of orders and quotes to be traded on the opening trade or through the subsequent exposure process, HOSS would give priority to public customer market orders first (with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority), then to limit orders and quotes whose price is better than the opening price (with multiple orders and quotes being ranked in accordance with the allocation algorithm in effect for the option class pursuant to CBOE Rule 6.45A, ''Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,'' or 6.45B, ''Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System),'' and then to limit orders and quotes at the opening price (with multiple orders and quotes being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B). *See* proposed Interpretation and Policy .03(c)(i) to Rule 6.2B.

[8] On an intra-day basis, orders are normally exposed through HAL to Market-Makers appointed to the relevant option class as well as members acting as agent for orders at the top of CBOE's book (''Qualifying Members'') in the relevant series. *See* CBOE Rule 6.14(b). For HOSS openings where HAL is used, the exposure to Qualifying Members would not be applicable because there would not be an established ''top of CBOE's book'' at the time. As part of a separate rule filing, the Exchange recently modified Rule 6.14 to permit electronic exposure of HAL orders on a class-by-class basis to all members that elect to receive HAL messages (not just Market-Makers appointed to the relevant option class and Qualifying Members) and to permit such members to participate in the HAL process. *See* Securities Exchange Act Release No. 57837 (May 20, 2008), 73 FR 30431 (May 27, 2008) (SR–CBOE–2008–46). In classes where all members that elect to receive HAL messages are eligible to participate in the HAL process for a particular class on an intra-day basis, all such members would also be eligible to participate in any HAL process that occurs as part of the HOSS opening in that class.

[9] In addition to the receipt of a response to trade any portion of the exposed order(s), the exposure period would also terminate early under the circumstances described in CBOE Rule 6.14(d).

[10] With respect to new proposed HAL exposure period, ''Exchange Initial BBO'' in CBOE Rule 6.14(i)–(ii) means the best bid (or offer) that exists in the system at the time the auction begins. This takes into account orders and quotes on the relevant side of the market that exist in the system at that time (including orders and quotes that may have been entered up until the beginning of the HAL auction). *See* e-mail from Jennifer Lamie, Assistant General Counsel, CBOE, to Sara Gillis, Special Counsel, Division, Commission, dated June 19, 2008.

[11] *See* proposed CBOE Rule 6.2B, Interpretation .03(c)(ii).

marketable orders (other than opening contingency orders) not executed via HAL on the opening would route as determined by the Exchange on a class-by-class basis to PAR, BART, or at the order entry firm's discretion to the order entry firm's booth printer.[12]

The Exchange also notes that all transactions executed via HOSS, including through the new proposed HAL exposure period, must be in compliance with Section 11(a) of the Act[13] and the rules promulgated thereunder. In this regard, the Exchange states that it believes that orders for proprietary accounts submitted into HOSS, including any such orders submitted as a response through the proposed HAL exposure period, would qualify for an exception under Rule 11a2–2(T).[14]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be 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 Commission believes that the proposed rule change will reduce delays in the opening of a series where the opening quote, acceptable opening range, and market order imbalance conditions (collectively, ''opening conditions'') currently would cause the Exchange to delay the opening of a series until the condition causing the delay is satisfied. Under the current HOSS procedures, the Exchange must undertake a manual process when one of the opening conditions exits, which includes notifying members of the existence of one of the opening conditions and waiting for the condition(s) to be remedied. The proposed rule change would automate the process for addressing the opening conditions by allowing the HAL functionality to be enabled on the openings in designated classes. Specifically, rather than preventing a series from opening, the Exchange's system will match orders and quotes to the extent possible and then expose the remaining marketable orders to HAL. The Commission believes that this may enhance the efficiency of HOSS opening rotations because it will allow the opening conditions to be addressed more quickly through the automated HAL process, as well as address NBBO condition scenarios where the Exchange's opening trade might occur at a price inferior to an away market.

Section 11(a)(1) of the Act[17] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act, known as the ''effect versus execute'' rule, provides exchange members with an exemption from the section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[18] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

The Rule's first condition is that orders for covered accounts must be transmitted from off the exchange floor. The HOSS system receives orders electronically through remote terminals or computer-to-computer interfaces.[19] In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[20] Since HOSS receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that such orders satisfy the off-floor transmission requirement. However, the Commission notes that to the extent a member submits an order for a covered account into HOSS from on the floor of the Exchange, such an order would not meet this requirement.

Second, the Rule requires that the member not participate in the execution of its order. CBOE represented that no Exchange member is able to acquire control or influence over the result or timing of an order's execution through HOSS. According to CBOE, the execution of a member's order through HOSS, including the subsequent HAL exposure, is determined solely by automated processing and execution by computerized systems.[21] Accordingly, the Commission believes that a member does not participate in the execution of an order submitted to HOSS.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the

[12] *See* proposed CBOE Rule 6.2B, Interpretation .03(c)(ii).

[13] 15 U.S.C. 78k(a).

[14] 17 CFR 240.11a2–2(T).

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k(a).

[18] The member may, however, participate in clearing and settling the transaction.

[19] *See* e-mail from Jennifer Lamie, Assistant General Counsel, CBOE, to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated July 31, 2008.

[20] *See, e.g.*, Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving The NASDAQ Options Market as an options exchange facility of The NASDAQ Stock Market (''Nasdaq'')); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq's application to register as a national securities exchange); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange (''PCX'')); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding the New York Stock Exchange's (''NYSE'') Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange (''Amex'') Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange's Automated Communications and Execution System (''1979 Release'')); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System (''1978 Release'')).

[21] The member may cancel or modify the order, or modify the instruction for executing the order. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* 1978 Release, *supra* note 20 (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor.'') Thus, the Commission notes that if such orders are cancelled or modified from on the floor of the Exchange, such orders would not meet this requirement of Rule 11a2–2(T).

member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[22] CBOE has represented that the design of HOSS, including the new HAL exposure period, ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange and is designed to prevent any Exchange members from gaining any time or place advantages. Based on CBOE's representation, the Commission believes that HOSS, as amended herein, satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to section 11(a) of the Act and Rule 11a2–2(T).[23] CBOE represents that members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[24]

Accordingly, for the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–2008–30) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18368 Filed 8–8–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58281; File No. SR–CBOE–2008–59]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change to Amend CBOE Rule 8.7 Related to the Obligations of Market-Makers

August 1, 2008.

On June 11, 2008, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 8.7 (Obligations of Market-Makers). The proposed rule change was published for comment in the **Federal Register** on June 30, 2008.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange recently amended CBOE Rule 8.1 (Market-Maker Defined) to expand the definition of market-maker by including member organizations.[4] In view of this change, the proposed rule change adds an interpretation to CBOE Rule 8.7 to clarify that the in-person requirements set forth in CBOE Rule 8.7.03B may be satisfied by market-makers either individually or collectively with market-makers of the same member organization.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that under the proposal the total amount of transactions that the rule would require to be executed in-person would not change, because a member organization that is registered as a market-maker would have to take into account the transactions of all its individual associated market-makers when determining the total transactions for which it would have to meet the in-person requirements. Further, the proposed rule change helps to ensure a more consistent application of the definition of market-maker within CBOE rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2008–59) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18373 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[22] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 20.

[23] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 20 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[24] *See* e-mail from Jennifer Lamie, Assistant General Counsel, CBOE, to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated July 31, 2008.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57996 (June 20, 2008), 73 FR 36937.

[4] *See* Securities Exchange Act Release No. 57615 (April 3, 2008), 73 FR 19537 (April 10, 2008) (SR–CBOE–2007–120).

[5] CBOE Rule 8.7.03B applies to both Hybrid 3.0 and non-Hybrid option classes. Currently, there are three Hybrid 3.0 classes and no non-Hybrid classes.

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58307; File No. SR–CBOE–2008–79]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Automated Improvement Mechanism

August 5, 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 July 30, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Automated Improvement Mechanism (''AIM'') in order to (i) give the Exchange the flexibility to lower the applicable crossing entitlement percentage on a class-by-class basis, and (ii) clarify that AIM can be made available in Hybrid 3.0 classes. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the AIM auction process, a member that represents agency orders may submit an order it represents as agent (''Agency Order'') along with a second order (a principal order or a solicited order for the same amount as the Agency Order) into the AIM auction where other participants could compete with the submitting member's second order to execute against the Agency Order. The Exchange is proposing to modify the AIM rule in order to provide the Exchange with the ability to determine the applicable crossing entitlement percentage afforded to the members initiating AIM executions (''Initiating Members''). Currently the crossing entitlement percentage is fixed at the following:

- If the best price equals the Initiating Member's single-price submission, the Initiating Member's single-price submission shall be allocated the greater of one contract or 40% of the order. However, if only one Market-Maker matches the Initiating Member's single price submission then the Initiating Member shall be allocated 50% of the order.
- If the Initiating Member selected the auto-match option of AIM, the Initiating Member shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating Member shall be allocated the greater of one contract or 40% of the remainder of the order.

Under the proposed rule change, the Exchange may determine the applicable crossing entitlement percentage on a class-by-class basis, provided that the percentage cannot exceed 40% (or, in a scenario involving a single price submission and only one other Market-Maker matching that price, 50%). This change would therefore allow the Exchange to set a lower crossing entitlement percentage than what is currently permitted under the rule. Any such changes to the entitlement percentage for a given class would be announced by circular.

The Exchange believes that the ability to set a lower entitlement percentage for AIM does not present any new, unique or substantive issues because various other rules already permit the Exchange to modify the applicable crossing entitlement percentage on a class-by-class basis. For example, paragraph (d) of Rule 6.74, *Crossing Orders,* permits the applicable crossing entitlement percentage for crossing orders in open outcry to be established on a class-by-class basis.

In addition, the Exchange wants to take this opportunity to clarify that the Exchange can determine to make AIM available in Hybrid 3.0 classes. Currently, the rule provides that an AIM auction can be initiated in classes designated by the Exchange as eligible. This could include, for example, classes trading on the Exchange's Hybrid Trading System and Hybrid 3.0 Platform.[5] The rule also provides that there must be at least three Market-Makers quoting in the relevant series for an AIM auction to begin (the ''three quoter requirement'').[6] In Hybrid 3.0 classes, since only a single quoter may submit an electronic quote (whether submitted electronically or as manual quote) that is disseminated on behalf of the Market-Maker quoting interest in the trading crowd, the Exchange is herein clarifying that the three quoter requirement is satisfied as long as there are at least three Market-Makers present in the trading crowd for the particular class on behalf of whom the single quoter is representing the electronic quote. No changes to the rule text are proposed in connection with this clarification.

The Exchange believes it is reasonable to clarify that AIM can be made available in Hybrid 3.0 classes. Making AIM available in such classes would provide additional flexibility for members to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction. In this regard, the Exchange notes that while there may be only a single quoter submitting electronic quotes for dissemination in Hybrid 3.0

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The ''Hybrid Trading System'' refers to the Exchange's trading platform that allows individual Market-Makers to submit electronic quotes in their appointed classes. The ''Hybrid 3.0 Platform'' is an electronic trading platform on the Hybrid Trading System that allows a single quoter to submit an electronic quote which represents the aggregate Market-Maker quoting interest in a series for the trading crowd. Members of the trading crowd may also verbalize quotes (''manual quotes'') to be input into the Exchange's systems by quote reporters for dissemination in classes trading on the Hybrid 3.0 Platform. Additionally, bids and offers may be made at the trading crowd post by public outcry in any option class trading on either the Hybrid Trading System or Hybrid 3.0 Platform. *See* Rules 1.1(aaa) and 6.43.

[6] The Exchange notes that it is proposing to eliminate the requirement that there be at least three (3) Market-Makers quoting in the relevant series through a separate rule filing, SR–CBOE–2008–42.

classes, responses may be submitted by all Market-Makers with an appointment in the relevant option class and Members on behalf of orders resting at the top of the Exchange's book opposite the agency order being auctioned.[7] In Hybrid 3.0 classes, which currently include options on the Standard and Poor's 500 Index (SPX), American-style options on the Standard and Poor's 100 Index (OEX) and options on the Morgan Stanley Retail Index (MVR), there are many Market-Makers at any given time that are eligible and connected to participate in AIM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide the Exchange with more flexibility to set a lower crossing entitlement percentage than what is currently permitted in the rule, which will allow us to determine the appropriate percentage for a given class based on competitive and other market considerations. With respect to Hybrid 3.0, the proposed rule change will also clarify that AIM can be made available in such classes and thus provide additional opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

[7] *See* Rule 6.74A(b)(1)(D)—(E).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–79. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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–CBOE–2008–79 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18485 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58315; File No. SR–CBOE–2008–81]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

August 6, 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 July 31, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 prepared by the CBOE. CBOE has designated this proposal as one

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (1) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (2) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[5] and the current access fee for ITP holders under Rule 3.27[6] are both $12,387 per month. Both access fees are currently set at the indicative lease rate (as defined below) for July 2008. The Exchange proposes to adjust both access fees effective at the beginning of August 2008 to be equal to the indicative lease rate for August 2008 (which is $10,653). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $10,653 per month commencing on August 1, 2008.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[7] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[8] The Exchange determined the indicative lease rate for August 2008 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of August 2008 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of July 2008 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of August 2008.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[9] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[10]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[11] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(2) of Rule 19b–4[15] thereunder. At any time within 60 days

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[6] *See* Securities Exchange Act Release No. 58178 (July 17, 2008) 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–04) for a description of the Interim Trading Permits under Rule 3.27.

[7] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[8] The concepts of an indicative lease rate (although not referred to by that term) and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts were also recently codified in Rule 3.27(b) in relation to ITPs.

[9] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[10] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–81 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–81. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2008–81 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18487 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58302; File No. SR–FINRA–2008–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 5110 (Corporate Financing Rule), 5190 (Notification Requirements for Offering Participants) and 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance With SEC Regulation M) in the Consolidated FINRA Rulebook

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) adopt NASD Rule 2710, without material change except for paragraphs (b)(10) and (11), as a FINRA rule in the consolidated FINRA rulebook; and (2) clarify and streamline the notice and other requirements in FINRA rules relating to Regulation M under the Act (including paragraphs (b)(10) and (11) of NASD Rule 2710 and paragraph (a) of Incorporated NYSE Rule 392). The proposed rule change would renumber NASD Rule 2710 as FINRA Rule 5110 and adopt new FINRA Rules 5190 and 6470 in the consolidated FINRA rulebook.

The text of the proposed rule change is available at FINRA, on FINRA's Web site at *http://www.finra.org,* and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to (1) adopt NASD Rule 2710 as FINRA Rule 5110, with the exception of paragraphs (b)(10) and (11); (2) adopt new FINRA Rule 5190, which would house the Regulation M-related notice requirements applicable to members participating in securities offerings (including paragraphs (b)(10) and (11) of NASD Rule 2710 and paragraph (a) of Incorporated NYSE Rule 392); (3) adopt new FINRA Rule 6470, which would house certain Regulation M-related requirements that are currently in the OTC Bulletin Board (''OTCBB'') rules and would apply to all OTC Equity Securities;[4] and (4) make conforming amendments to the Regulation M-related rules applicable to the Alternative Display Facility (''ADF'').

Corporate Financing Rule

NASD Rule 2710 (Corporate Financing Rule), except paragraphs (b)(10) and (11) (which are discussed below), regulates the underwriting terms

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] NASD Rule 6610(d) defines OTC Equity Security as ''any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.''

and arrangements of most public offerings, including shelf offerings, of securities sold through FINRA members. The Rule requires members to file with FINRA's Corporate Financing Department (the ''Corporate Financing Department'') information regarding initial public offerings and certain secondary offerings and to submit pertinent documentation, including registration statements. The Corporate Financing Department reviews this information prior to commencement of the offering to determine whether the underwriting compensation and other terms and arrangements meet the requirements of applicable FINRA rules. Members are required to receive the Corporate Financing Department's opinion of no-objections to the offering terms prior to participating in the offering.

FINRA is proposing to adopt NASD Rule 2710 as FINRA Rule 5110 in the Consolidated FINRA Rulebook. With the exception of the deletion of paragraphs (b)(10) and (11), as discussed below, FINRA is proposing to make only technical non-substantive changes to the Rule, such as replacing references to NASD or the Association with FINRA, and certain conforming changes to references in the Rule to, e.g., the Exchange Act, SEA Rules, the Securities Act and Securities Act Rules.

Regulation M-Related Requirements

Background and Discussion of Current FINRA Rules

Regulation M is designed to prevent manipulation by persons with an interest in the outcome of an offering and generally prohibits activities and conduct that could artificially influence the market for an offered security.[5] In this regard, Regulation M generally prohibits underwriters, broker-dealers, issuers and other persons participating in a distribution from directly or indirectly bidding for or purchasing the offered security (or inducing another person to do so) during the ''restricted period,'' which commences on the later of either one or five business days prior to the determination of the offering price or such time that a person becomes a distribution participant. For purposes of determining whether a one or five-day or no restricted period applies under Regulation M, the SEC has adopted a dual standard of world-wide average daily trading volume (''ADTV'') and public float value. Regulation M also governs certain market activities, usually undertaken by the managing underwriter or underwriting group (i.e., stabilizing bids, syndicate covering transactions and penalty bids)[6] in connection with an offering and requires that notice of such activity be provided to the relevant self-regulatory organization or, in the case of stabilizing bids, the market where the stabilizing bid is to be posted. Finally, Regulation M generally prohibits any person from selling short a security that is the subject of a public offering and purchasing the security in the offering if such short sale was effected during the restricted period (which, for purposes of the short sale restrictions, generally is the five-day period prior to pricing).[7]

As part of FINRA's program to monitor for member compliance with Regulation M, FINRA's Market Regulation Department (the ''Market Regulation Department'') reviews members' over-the-counter (''OTC'') trading and quoting activity for prohibited purchases and/or bids during the applicable restricted period and short sales during the five-day period prior to pricing the offering. FINRA rules must ensure that FINRA receives pertinent distribution-related information in a timely fashion to facilitate this component of FINRA's Regulation M compliance program.

FINRA's current Regulation M-related rules comprise notice requirements set forth in NASD Rule 2710(b)(10) and (11) and Incorporated NYSE Rule 392 (Notification Requirements for Offerings of Listed Securities), as well as marketplace-specific requirements in the OTCBB and ADF rules. NASD Rule 2710(b)(10) requires members that are acting as manager (or in a similar capacity) of a distribution of unlisted securities that are considered a subject or reference security subject to Rule 101 of Regulation M or an ''actively traded'' security under Rule 101 of Regulation M to submit a request for an Underwriting Activity Report (''UAR'') from the Market Regulation Department. The request for a UAR, which is the mechanism by which FINRA currently receives notice of prospective distributions, must be submitted at the time a registration statement or similar offering document is filed with the Corporate Financing Department, the SEC or other regulatory agency and if not filed with any regulatory agency, at least two business days prior to commencement of the restricted period. Such request must include a copy of the registration statement or similar offering document. If no member is acting as manager, then each member that is a distribution participant or affiliated purchaser shall submit the request for a UAR, unless another member has assumed responsibility for compliance.

NASD Rule 2710(b)(11) requires members that are acting as manager (or in a similar capacity) of a distribution of securities that are listed on a national securities exchange and considered a subject security or reference security subject to Rule 101 of Regulation M or an ''actively traded'' security under Rule 101 of Regulation M to provide notice to the Market Regulation Department of the pricing of the distribution, including the date and time of pricing, the offering price and the time the distribution terminated. Such notice must be provided no later than the close of business the day the offering terminates and may be submitted on the UAR.

Incorporated NYSE Rule 392(a) requires that Dual Members provide notice of pricing and related information (including the restricted period, if any, the offering price and the basis for pricing) in connection with an offering of an NYSE-listed security. Incorporated NYSE Rule 392(b) requires that Dual Members provide notice of syndicate covering transactions and penalty and stabilizing bids in connection with an offering of an NYSE-listed security.

FINRA's OTCBB and ADF-related marketplace rules also include certain Regulation M-related requirements. Any member that is a distribution participant or affiliated purchaser in a distribution of an OTCBB-eligible security must provide notice to the Corporate Financing Department of its intention to impose a penalty bid or conduct a syndicate covering transaction pursuant to Rule 104 of Regulation M.[8]

In addition, members are required to withdraw their quotations in the OTCBB (in OTCBB-eligible securities) and the ADF (in NMS stocks) to comply with applicable restricted periods under Regulation M. Specifically, a member that is a distribution participant or affiliated purchaser in a distribution of an OTCBB-eligible security must withdraw its quotations in the offered security[9] and provide notice to FINRA's Operations Department prior to

[5] *See* Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997).

[6] A ''stabilizing bid'' is a bid that is intended to maintain the price of the offered security and is necessary to prevent or retard a decline in the security's price. A ''penalty bid'' allows a lead underwriter to reclaim a selling concession paid to a syndicate member if that member's customers sell their allocated shares in the immediate aftermarket. A ''syndicate covering transaction'' is generally defined as placing a bid or effecting a purchase to reduce a syndicate short position.

[7] *See* Exchange Act Release No. 56206 (August 6, 2007), 72 FR 45094 (August 10, 2007).

[8] *See* NASD Rule 6540(d)(1)(D)(iii).

[9] *See* NASD Rule 6540(d)(1)(D)(ii).

pricing.[10] The member must also provide notice to the Market Regulation Department upon the pricing of the distribution.[11] Additionally, members are prohibited from entering stabilizing bids pursuant to Rule 104 of Regulation M in the OTCBB.[12]

With respect to quotations in the ADF, FINRA's Operations Department may grant excused withdrawal status to a Registered Reporting ADF Market Maker, as defined in NASD Rule 4200A(a)(14), that is a distribution participant or affiliated purchaser in a distribution of an NMS stock in order to comply with the applicable restricted period under Regulation M.[13] A member acting as manager (or in a similar capacity), or any member that is a distribution participant or affiliated purchaser in a distribution that does not have a manager, must notify FINRA's ADF Operations and the Market Regulation Department of a prospective distribution and request a withdrawal of each market maker's quotations.[14] Members also must submit a written request to ADF Operations and the Market Regulation Department to rescind the market maker's excused withdrawal status and provide notice of the date and time of the pricing of the offering, the offering price, and the time the offering terminated.[15]

Proposed New FINRA Rule 5190

To clarify and streamline FINRA's rules in this area, FINRA is proposing to consolidate and house all Regulation M-related notice requirements in a single rule—proposed new FINRA Rule 5190 (Notification Requirements for Offering Participants). The scope of the current rules and information required would be expanded, as necessary, to impose consistent notice requirements relating to distributions of listed and unlisted securities. The proposed rule change would ensure that FINRA receives from its members pertinent distribution-related information in a timely fashion.

Proposed Rule 5190(c) sets forth the notice requirements applicable to distributions of listed and unlisted securities that are ''covered securities'' (as that term is defined under Regulation M) subject to a restricted period under Rule 101 or 102 of Regulation M. Specifically, proposed Rule 5190(c)(1)(A) would require members to determine, in accordance with Regulation M, whether a distribution is subject to a one-day or five-day restricted period under Rule 101 of Regulation M, and provide written notice to FINRA of the members' determination and the basis for such determination.[16] Additionally, pursuant to proposed Rule 5190(c)(1)(A), members would be required to include in the written notice the contemplated date and time of commencement of the restricted period, identifying the distribution participants and affiliated purchasers.

Members would be required to provide such notice no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances.[17] FINRA notes that where the principal market closes early, e.g., for a holiday, the shortened session would constitute a complete trading session for purposes of the proposed Rule. NASD Rule 2710(b)(10) requires that notice be provided at the time of filing the registration statement. However, for some distributions, particularly shelf offerings, the registration statement may be filed well in advance of commencement of the distribution. As a result, by the time the distribution takes place, the information previously provided by the member could be out-of-date or the ADTV or public float levels could have changed, in which case a different restricted period would apply.

The proposed rule change would eliminate the express requirement under FINRA rules that members request a UAR and would instead permit FINRA to prescribe the form in which notice and the required information must be submitted to FINRA (including, as discussed above, notice of the member's independent determination regarding whether a restricted period applies).[18] The proposed rule change also would eliminate the requirement in NASD Rule 2710(b)(10) that members submit a copy of the registration statement. The Market Regulation Department does not rely on the registration statement in monitoring member quoting and trading activity for purposes of Regulation M compliance. Moreover, FINRA believes that this requirement could potentially suggest that the Regulation M-related requirements are applicable only to registered offerings when, in fact, certain unregistered offerings, e.g., private placements and PIPEs, are subject to Regulation M and FINRA's notice requirements.

Proposed Rule 5190(c)(1)(B) would require that upon pricing a distribution that is subject to a restricted period under Rule 101 of Regulation M, members provide written notice to FINRA and the following information: The security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis (e.g., the prior day closing price, a negotiated price, last sale, etc.), the SEC effective date and time, the trade date and the restricted period. Consistent with proposed paragraph (c)(1)(A), members also would be required to identify the distribution participants and affiliated purchasers.

The notice under proposed Rule 5190(c)(1)(B) would be required to be submitted no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances. NASD Rule 2710(b)(11) requires that notice of pricing be provided no later than the close of business the day the offering terminates; however, most members immediately provide notice of pricing today. In addition to being consistent

[10] *See* NASD Rule 6540(d)(1)(D)(i).

[11] *See* NASD Rule 6540(d)(1)(D)(iv).

[12] *See* NASD Rule 6540(d)(1)(D)(ii).

[13] *See* NASD Rule 4619A(f).

[14] *See* NASD Rule 4619A(f)(1).

[15] *See* NASD Rule 4619A(f)(3).

[16] While the proposed rule change would place the onus of determining the applicable restricted period on the member for all distributions, as a practical matter, FINRA would accept notification by a member that the maximum five-day restricted period applies to a prospective distribution, without providing the basis for that determination. If, on the other hand, a member were to assert that a one-day or no restricted period applied to a particular distribution, FINRA would require that the member demonstrate the basis for that determination.

[17] In most instances, FINRA would expect to receive notification within the prescribed time frame, but may permit later notification in limited circumstances. Such determination would be made by the Market Regulation Department on a case-by-case basis. For example, there may be instances where the nature of the transaction has made it impossible to provide timely notice (e.g., a private investment in public equity (''PIPE'') offering is commenced and priced on the same day, and thus the member could not have provided notice on the business day prior to the first complete trading session of the applicable restricted period). Current NASD Rule 4619A(f)(1), which sets forth the notice and withdrawal of quotations requirements applicable to ADF participants for purposes of compliance with Regulation M, similarly contemplates later notification where necessary under the specific circumstances.

[18] FINRA will announce the form and method of transmission in a *Notice* to be published on its Web site. For example, such form could include the request for a UAR in connection with distributions of Nasdaq-listed securities.

Additionally, FINRA notes that the Market Regulation Department monitors for purposes of compliance with Regulation M on behalf of the Nasdaq Exchange pursuant to a Regulatory Services Agreement (RSA). The Market Regulation Department will continue to generate UARs on behalf of the Nasdaq Exchange under the RSA to assist firms in determining the applicable restricted period, as well as applicable Nasdaq passive market making limits, under Regulation M with respect to Nasdaq-listed securities pursuant to Nasdaq Exchange rules.

with current practice, the proposed rule change would ensure that FINRA gets timely pricing information in instances where a distribution does not terminate for weeks or even months after pricing.

Finally, proposed Rule 5190(c)(1)(C) would require that members provide written notice of the cancellation or postponement of any distribution for which prior notice of commencement of the restricted period has been provided to FINRA. Members would be required to provide such notice immediately upon the cancellation or postponement of the distribution.

Proposed Rule 5190(c)(2) would require that any member that is an issuer or selling security holder in a distribution of any security that is a covered security subject to a restricted period under Rule 102 of Regulation M comply with the notice requirements of proposed Rule 5190(c)(1), unless another member has assumed responsibility in writing for compliance therewith. The proposed provision would ensure that FINRA receives notice of any distribution in which a member is participating as an issuer or selling security holder, to the extent that notice of such distribution has not already been provided under proposed Rule 5190.

Proposed Rule 5190(d) sets forth the notice requirements applicable to distributions of listed and unlisted securities that are considered ''actively traded'' securities and thus are not subject to a restricted period under Rule 101 of Regulation M.[19] In connection with such distributions, pursuant to proposed Rule 5190(d)(1), members would be required to provide written notice to FINRA of the member's determination that no restricted period applies and the basis for such determination. Proposed Rule 5190(d)(1) would require that such notice be provided at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances.

Proposed Rule 5190(d)(2) would require that upon pricing a distribution of a security that is considered ''actively traded'' under Rule 101 of Regulation M, members provide written notice to FINRA and the same pricing-related information that would be required under proposed paragraph (c)(1)(B) (discussed above). Also consistent with proposed paragraph (c)(1)(B), proposed Rule 5190(d)(2) would require members to identify the distribution participants and affiliated purchasers, and provide the required notice no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.[20]

Under paragraphs (c)(1) and (d) of proposed Rule 5190, a member acting as manager (or in a similar capacity) of the distribution would have the obligation to submit the requisite notice to FINRA. However, if no member is acting as manager (or in a similar capacity), then each member that is a distribution participant or affiliated purchaser would be required to provide notice to FINRA, unless another FINRA member has assumed responsibility in writing for compliance with the notice requirement. This is consistent with the current approach under NASD Rule 2710(b)(10).[21]

Finally, proposed Rule 5190(e) would require members to provide notice to FINRA of penalty bids or syndicate covering transactions in connection with an offering of an OTC Equity Security. Members would be required to provide notice to FINRA of their intention to conduct such activity, prior to imposing the penalty bid or engaging in the first syndicate covering transaction, as well as pertinent information, such as identification of the security and its symbol and the date such activity will occur. In addition, members would be required to subsequently confirm such activity within one business day of completion, including identification of the security and its symbol, the total number of shares and the date(s) of such activity. The proposed provision is substantially similar to NASD Rule 6540(d)(1)(D)(iii). By including these notice requirements in proposed Rule 5190, the proposed rule change would clarify that they apply to distributions of all OTC Equity Securities and are not limited to distributions of OTCBB-eligible securities.

In light of the foregoing, FINRA is proposing to delete paragraphs (b)(10) and (11) from NASD Rule 2710 and Incorporated NYSE Rule 392 in its entirety. The notice requirements of NASD Rule 2710(b)(10) and (11) and Incorporated NYSE Rule 392(a) largely would be incorporated in proposed Rule 5190. Because Incorporated NYSE Rule 392(b) is specific to the NYSE marketplace, FINRA is not proposing that these requirements become part of the Consolidated FINRA Rulebook.

Proposed Amendments to Marketplace Rules

FINRA also is proposing to clarify the scope and application of the Regulation M-related requirements that are in the current OTCBB and ADF marketplace rules.[22] FINRA is proposing to adopt new FINRA Rule 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M), which would (1) require a member that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an OTC Equity Security that is a covered security subject to Rule 101 or Rule 102 of Regulation M to withdraw all quotations in the security during the restricted period; and (2) prohibit the entry of stabilizing bids for the OTC Equity Security pursuant to Rule 104 of Regulation M. Proposed Rule 6470 is substantially similar to NASD Rule 6540(d)(1)(D)(ii) and would clarify that the requirements apply not only to OTCBB-eligible securities, but to all OTC Equity Securities quoted in any inter-dealer quotation system (i.e., OTCBB and Pink Sheets). Thus, under the proposed rule change, the Regulation M-related provisions would be deleted from the OTCBB rules (specifically, paragraphs (d)(1)(D), (E) and (F) would be deleted from NASD Rule 6540) and comparable requirements would be housed in either proposed Rule 5190, as discussed above, or proposed Rule 6470.

Second, FINRA is proposing to make certain conforming changes to the Regulation M-related rules applicable to the ADF. Specifically, FINRA is proposing to amend NASD Rule 4619A(f) to conform to the language and structure of proposed Rule 6470. Thus, a Registered Reporting ADF Market

[19] The exclusion for ''actively traded securities'' removes from Rule 101 of Regulation M securities with an ADTV value of at least $1 million where the issuer's common equity securities have a public float value of at least $150 million.

[20] FINRA notes that a member that is an issuer or selling security holder in a distribution of an actively traded security that is subject to a restricted period under Rule 102 of Regulation M would be required to comply with the notice requirements under proposed Rule 5190(c)(2).

[21] Members would be required to update the notice required under the proposed Rule, as necessary (e.g., a manager would update the notice where distribution participants are added after commencement of the restricted period).

[22] On May 23, 2008, FINRA filed proposed rule change SR–FINRA–2008–021, in which FINRA proposes, among other things, to adopt NASD Marketplace Rules 4200A, 4619A and 6540 as FINRA Rules 6220, 6275 and 6540, respectively, and the NASD Rule 6600 Series as the FINRA Rule 6400 Series, without material change, in the Consolidated FINRA Rulebook. Assuming Commission approval of SR–FINRA–2008–021 prior to the approval of this proposed rule change, FINRA will amend this filing, as necessary, to reflect such approval.

The Staff of the Commission (''Staff'') also notes that FINRA has filed two other proposals related to NASD Rule 2710 previously (SR–NASD–2004–022 and SR–FINRA–2007–009) that are outstanding. The Staff has confirmed with FINRA that they will amend those filings to reflect the movement of NASD Rule 2710 to the Consolidated FINRA Rulebook.

Maker that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an NMS stock that is a covered security subject to Rule 101 or 102 of Regulation M would be required to request an excused withdrawal of its quotations in the ADF in the offered security. FINRA believes that it is more appropriate to impose such obligation on the member that is posting the quotation, rather than require the manager of the distribution to do so on behalf of each member. FINRA also is proposing to amend NASD Rule 4200A, which sets forth the definitions applicable to the ADF rules, to make technical and conforming changes such as adding necessary references to Regulation M and deleting definitions that are currently not used in the ADF rules.

FINRA believes that the proposed rule change will significantly improve the clarity of the current rules and enhance the information FINRA receives, which will better enable FINRA to monitor member OTC quoting and trading for purposes of Regulation M compliance.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[23] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The rules being adopted as part of the Consolidated FINRA Rulebook previously have been found to meet the statutory requirements, and FINRA believes that those rules have since proven effective in achieving the statutory mandates. In addition, FINRA believes that the proposed rule change will significantly improve the clarity of FINRA's current Regulation M-related rules and enhance FINRA's ability to monitor member OTC quoting and trading for purposes of Regulation M compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[23] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 insert SR–FINRA–2008–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–039 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence Harmon,

Acting Secretary.

[FR Doc. E8–18371 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58291; File No. SR–FINRA–2008–043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Establish a Membership Waive-In Process and Fee Waiver for Certain NYSE Alternext U.S. LLC Member Organizations

August 1, 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 July 30, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to establish Interpretive Material 1013–2 (''IM–1013–2''), a membership waive-in process for certain American Stock Exchange LLC (''AMEX''), to be renamed NYSE Alternext U.S. LLC (''NYSE Alternext''), member organizations and to amend Interpretive Material Section 4(b)(1) and (e) to Schedule A of the By-Laws to establish a membership application fee waiver for those NYSE Alternext member organizations that apply for membership pursuant to IM–1013–2. The Waive-In Membership Application Form is attached as Exhibit 3 to this rule filing. The text of the proposed rule change is available at the FINRA's principal office, the Commission's Public Reference Room, and *http://www.finra.org*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 17, 2008, the Amex Membership Corporation and NYSE Euronext entered into an Agreement and Plan of Merger (''Merger Agreement'') whereby, through a series of mergers, NYSE Euronext will acquire AMEX (''Merger Transaction'')[3] and as a result of these mergers (the ''Mergers''), AMEX will become one of the U.S. wholly owned subsidiaries of NYSE Group and will be renamed NYSE Alternext U.S. LLC.

To achieve efficiencies in the regulation of NYSE Alternext member organizations, NYSE intends to (1) require mandatory FINRA and NYSE membership for NYSE Alternext member organizations (other than those that exclusively trade options),[4] (2) adopt a series of member conduct rules for NYSE Alternext member organizations that are substantively identical to the Incorporated NYSE Rules that are the subject of an Agreement among FINRA, New York Stock Exchange LLC, and NYSE Regulation, Inc. (''NYSE Regulation''), pursuant to Rule 17d–2 under the Act (the ''17d–2 Agreement''), and (3) amend the 17d–2 Agreement to include NYSE Alternext as a party to that agreement so that FINRA will assume regulatory responsibility consistent with the terms of that agreement for the NYSE Alternext Equities rules that are substantively identical to the Incorporated NYSE Rules.

In furtherance of these efforts, the proposed rule change would establish a membership waive-in process for certain NYSE Alternext member organizations, similar to the process for NYSE member organizations.[5]

The proposed rule change would apply to any NYSE Alternext member organization that holds a valid 86 Trinity Permit[6] as of the date such firm transfers its equities operations to the NYSE Alternext Trading Systems[7] and is not currently a FINRA member.

FINRA recognizes that the AMEX and NYSE have comprehensive membership applications and review processes based on similar principles and standards to that of FINRA. As such, those NYSE Alternext member organizations that will become FINRA members already have been subjected to an extensive screening process. Therefore, the proposed rule change would establish IM–1013–2 (Membership Waive-In Process for Certain NYSE Alternext U.S. LLC Member Organizations), a process that would make such firms eligible to automatically become a FINRA member and to automatically register all associated persons whose registrations are approved with NYSE Alternext in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department (''the Department'') of a signed waive-in membership application (''Waive-In Application'').[8]

Associated persons of the NYSE Alternext member organizations will be automatically registered with FINRA only for those registration categories that are recognized jointly by FINRA and NYSE Alternext—*e.g.*, a General Securities Representative (Series 7); provided, however, that the firm must, upon approval of FINRA membership, submit an amended Form U4 for each such associated person, denoting the corresponding FINRA registration category(ies) for such person. A list of those registration categories is included as part of the Waive-In Application. (Please note that both FINRA and AMEX recognize the Series 9/10, but for FINRA, persons who have passed the Series 9/10 may function only as a General Securities Sales Supervisor (*see* NASD Rule 1022(g))). For those associated persons registered in a category recognized only by NYSE Alternext, FINRA will acknowledge such registrations to permit such persons to continue to function in the capacity for which they are registered.

The Waive-In Application would require the following information:

(1) General company information, including Central Registration Depository (CRD®) Number and contact person;

(2) An attestation that all information on the applicant's CRD® form, as of the date of submission of the Waive-In Application, is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures;

(3) The identity of the firm's Executive Representative;

[3] *See* SR–AMEX–2008–62 and SR–AMEX–2008–63.

[4] *See* SR–NYSE–2008–70.

[5] FINRA established a waive-in process to expedite the approval of membership applications of NYSE-only member organizations that were required to become FINRA members. That process is set forth in IM–1013–1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations). *See* Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (File No. SR–NASD–2007–056).

[6] The ''86 Trinity Permit'' will authorize owners, lessees or nominees of AMEX Regular Members or Options Principal Members (''OPMs''), AMEX limited trading permit holders, and AMEX associate members who were authorized to trade on the AMEX immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York (the ''86 Trinity Trading Systems''). NYSE Alternext will recognize the former AMEX (i) owners, lessees or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

[7] In connection with the Mergers, NYSE Euronext intends to relocate all equities trading previously conducted on the 86 Trinity Trading Systems to the NYSE's trading systems and facilities located at 11 Wall Street, New York, New York (the ''NYSE Alternext Trading Systems'').

[8] The NYSE is proposing a 60-day grace period for such NYSE Alternext member organizations to apply for and be approved for FINRA membership. In coordination with this proposal and with respect to the requirement in Incorporated NYSE Rule 2, FINRA would permit a 60-day grace period within which these member organizations must apply for and be approved for FINRA membership. Such grace period would run from the date that the NYSE Alternext member organization transfers its equities operations to NYSE Alternext Trading Systems.

(4) Completed and signed Entitlement Forms (unless previously submitted);

(5) A signed FINRA Membership Agreement; and

(6) Representations that the applicant's Uniform Application for Broker-Dealer Registration (''Form BD'') will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

The proposed rule change would require the Department to review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement would become effective on the date of such notification letter.

As set forth in proposed IM–1013–2, the NYSE Alternext member organizations admitted pursuant to proposed IM–1013–2, being member organizations of both NYSE and NYSE Alternext, would be subject to the consolidated FINRA rules [9] (provided that firms admitted to FINRA membership under IM–1013–1 also are subject to the consolidated FINRA rules),[10] the NYSE rules incorporated by FINRA,[11] the FINRA By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and the NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their NYSE or NYSE Alternext securities business is limited to floor-based activities in either NYSE-traded or NYSE Alternext-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE Alternext floor business under NYSE Rule 70.40 or NYSE Alternext Equities Rule 70.40 (''permitted floor activities'').[12]

If an NYSE Alternext member organization admitted pursuant to proposed IM–1013–2 seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm would become subject to all NASD Rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

Associated persons of an NYSE Alternext member organization admitted to FINRA pursuant to proposed IM–1013–2 would be subject to the same set of rules as the firm with which they are associated. Inasmuch as these associated persons would not be subject to NASD Rules 1021 or 1031, they would not be required to register in a registration category recognized by FINRA. To the extent that such persons continue to be associated solely with a firm whose business complies with the limitations imposed on those firms admitted to FINRA pursuant to proposed IM–1013–2, FINRA is not imposing any registration requirements beyond those required by the NYSE or NYSE Alternext, provided their business is confined in scope as contemplated in proposed IM–1013–2.[13]

Finally, the proposed rule change would amend Interpretive Material Section 4(b)(1) and 4(e) of Schedule A of the FINRA By-Laws to exempt NYSE Alternext applicants from the assessment of a FINRA membership application fee and from fees for each initial Form U4 filed by the applicant with FINRA for the registration of a representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to proposed IM–1013–2. FINRA believes the exemption is appropriate because the waive-in application process will not require the same resources by the Department as when a new applicant that is not already a member of NYSE or NYSE Alternext seeks membership.

The effective date of the proposed rule change will be the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will facilitate the application process for NYSE Alternext member organizations with a waive-in process that ensures that these firms meet suitable standards for admission into FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 FINRA consents, the Commission will:

(A) By order approve such proposed rule change; or

[9] The new consolidated FINRA rulebook (''Consolidated FINRA Rulebook'') will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.

[10] FINRA is proposing that firms admitted to FINRA membership under IM–1013–1 be subject to the consolidated FINRA rules. *See* Securities Exchange Act Release No. 58206 (July 22, 2008), 73 FR 43808 (July 28, 2008).

[11] The NYSE notes in its filing SR–NYSE–2008–70 that while the AMEX rules governing membership are substantially similar to NYSE rules governing membership (*i.e.*, NYSE Rules 311–313), there are certain additional requirements that are not contained in the AMEX rules, including a requirement that a member organization submit an opinion of counsel that a member corporation's stock is validly issued and outstanding and that restrictions and provisions required by NYSE on the transfer, issuance, conversion and redemption of its stock have been made legally effective. *See* NYSE Rule 313.20. NYSE proposes to allow NYSE Alternext member organizations six months from the date the member organization transfers its equities operations to the NYSE Alternext Trading Systems to comply with the membership requirements in NYSE Rules 311–313. FINRA also proposes to grant NYSE Alternext member organizations becoming FINRA members pursuant to IM–1013–2 an identical period to comply with Incorporated NYSE Rules 311–313.

[12] For purposes of this filing, activities that are ancillary to a Floor broker's core business include (i) routing orders in NYSE-traded or NYSE Alternext-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations, or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded, NYSE Alternext-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded or NYSE Alternext-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded or NYSE Alternext-traded securities.

[13] The licensing and other requirements applicable to the NYSE Alternext member organizations and their associated persons are subject to change as part of the process of establishing the Consolidated FINRA Rulebook.

[14] 15 U.S.C. 78o–3(b)(6).

(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–FINRA–2008–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–043 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18384 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58308; File No. SR–FINRA–2008–027]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

August 5, 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 July 18, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to transfer without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) into the new consolidated FINRA rulebook (''Consolidated FINRA Rulebook'')[3] and to delete the corresponding provisions in NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook, and would delete NASD Rules 3060 and 3090 in their entirety from the Transitional Rulebook. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

As part of the process of developing the Consolidated FINRA Rulebook, FINRA is proposing to transfer without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) into the Consolidated FINRA Rulebook and to delete the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook, and would delete NASD Rules 3060 and 3090 in their entirety from the Transitional Rulebook.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

(A) Proposed FINRA Rule 3220

(1) Background

NASD Rule 3060 (Influencing or Rewarding Employees of Others) currently states that no member or

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules (hereinafter, ''NYSE Rules'') apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

associated person shall give gifts or gratuities to an agent or employee of another person in excess of $100 per year where the gift or gratuity is in relation to the business of the employer of the recipient. The rule, which protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer, has been in effect in its current form since 1969, with changes only to the dollar amounts, rising from $25 to $50 to $100.[4] The rule requires each member to maintain a separate record of all gifts or gratuities. The rule also contains an express exclusion for payments made pursuant to *bona fide,* written employment contracts.

NYSE Rule 350 (Compensation or Gratuities to Employees of Others) reaches similar conduct in prohibiting, absent prior written consent of the recipient's employer, any member or member organization from giving any gratuity in excess of $100 per person per year to any principal, officer, or employee of another member or member organization, financial institution, news or financial information media, or non-member broker or dealer in securities, commodities or money instruments.[5] NYSE Rule 350 has specific provisions addressing compensation to operations employees of members (*e.g.*, NYSE Floor personnel). In addition, NYSE Rule 350 requires that records of all such gratuities and compensation be retained for at least three years.

(2) Proposal

FINRA proposes that NASD Rule 3060 be transferred into the Consolidated FINRA Rulebook without material change and renumbered as FINRA Rule 3220. One of the advantages of the existing regulatory standard is the clarity of the rule's application—it prevents gifts in excess of a fixed amount, currently $100. Both the NASD and NYSE rules have a $100 limitation on gifts.

FINRA believes that NASD Rule 3060 generally is well understood by members. FINRA recently issued additional guidance on NASD Rule 3060 in *Notice to Members* 06–69.[6] Among the issues addressed in that *Notice* was the fact that NASD Rule 3060 does not apply to gifts of *de minimis* value, or to promotional items of nominal value displaying a firm's logo. The *Notice* stated that NASD Rule 3060 does not prohibit customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction or event. The *Notice* also stated that gifts should be valued at the higher of cost or market value and tickets should be valued at the higher of cost or face value. In addition, FINRA staff has used its interpretive authority to address unintended consequences of the rule, such as unreasonable limitations on giving a bereavement or sympathy gift.[7]

FINRA would eliminate the provision in NYSE Rule 350 permitting member firms to obtain prior written consent of the recipient's employer for any gift over $100. FINRA believes that the gift rule should establish a fixed amount and does not see any business need to justify giving gifts in amounts greater than the limits specified in the rule. FINRA also would delete the provisions in NYSE Rule 350 and NYSE Rule Interpretation 350/02 addressing compensation to operations/Floor employees of NYSE as they are not relevant for FINRA.[8] For similar reasons, provisions in NYSE Rule 350.10 pertaining to employment of or gratuities to personnel working the Floor of other exchanges would be deleted.[9] Finally, FINRA would eliminate the provisions of NYSE Rule 350 relating to record retention, as NASD Rule 3060(c) addresses the same issue.

FINRA would eliminate NYSE Rule Interpretation 350/01, and provisions in NYSE Rule 350.10 pertaining to gifts among close relatives, because the concepts contained in both are adequately addressed by proposed FINRA Rule 3220 and existing guidance. Lastly, FINRA would eliminate NYSE Rule Interpretation 350/03 because FINRA has proposed a separate rule that addresses business entertainment.[10]

(B) Proposed FINRA Rule 2070

(1) Background

Both NASD and NYSE rules address conflicts of interest involving FINRA and NYSE employees.

NASD Rule 3090 addresses this issue in three ways. First, NASD Rule 3090(a) requires a member, when it has actual notice that an NASD employee has a financial interest or controls trading in an account, to promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to NASD. Second, NASD Rule 3090(b) prohibits a member from making any loan of money or securities to an NASD employee. This prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship. Third, NASD Rule 3090(c) prohibits any member from directly or indirectly giving, or permitting to be given, anything of more than nominal value to any NASD employee who has responsibility for a regulatory matter involving the member. This applies regardless of the $100 per individual per year limitation set forth in NASD Rule 3060(a). The term ''regulatory matter'' is defined to include, without limitation, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.

The NYSE rules governing conflicts of interest involving NYSE employees differ from the NASD approach in two ways. First, rather than applying the duplicate statement approach to NYSE employees (which applies to NASD employees under NASD Rule 3090(a)), NYSE Rule 407(a) prohibits a member or member organization, without the prior written consent of the NYSE, from opening a securities or commodities account or executing any transaction in which an employee of the NYSE is

[4] *See NASD Notice to Members* 93–8 (February 1993) (SEC Approval of Amendment Relating to the Payment of Gratuities or Anything of Value by Members to Others); *see also* Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (SR–NASD–84–8) (approval order).

[5] In addition, NYSE Rule 350(a)(1) prohibits any member from employing or compensating any person for services rendered except with the prior consent of that person's employer. FINRA proposes to delete this provision, even though it does not pertain to gifts, because a substantively identical provision exists in NYSE Rule 346(b). FINRA intends to review NYSE Rule 346(b) as part of a later phase of the rulebook consolidation process.

[6] *See* NASD *Notice to Members* 06–69 (December 2006) (Gifts and Gratuities).

[7] See Interpretive Letter dated December 17, 2007 to Amal Aly, SIFMA from Gary L. Goldsholle, FINRA, available at: *<http://www.finra.org/RulesRegulation/ PublicationsGuidance/InterpretiveLetters/ConductRules/P037695>*.

[8] NYSE Rule Interpretation 350/02 would be deleted in its entirety. Note that NYSE Rule 350 also contains provisions that address gifts and gratuities to employees of the NYSE. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. *See* Section (B) under Item II.A.1. FINRA's proposals with respect to FINRA Rules 3220 and 2070 would, in combination, delete NYSE Rule 350 in its entirety.

[9] NYSE Rule 350.10 also contains provisions that address employment or compensation of NYSE employees by members or member organizations. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. *See* Section (B) under Item II.A.1. Because Proposed FINRA Rules 3220 and 2070 would address the substance of NYSE Rule 350.10, FINRA proposes to delete NYSE Rule 350.10 in its entirety.

[10] *See* Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (Notice of Filing of Proposed Rule Change; File No. SR–NASD–2006–044); *see also* Amendment No. 3 to File No. SR–NASD–2006–044 (January 2, 2008).

directly or indirectly interested.[11] NYSE Rule 401.10 states that an employee of the NYSE or any of its affiliated companies who wishes to open a securities or commodities account should apply for permission from the NYSE's Ethics Officer. Second, the NYSE Rules differ from the nominal value approach set forth in NASD Rule 3090(c) by instead setting procedures for outside compensation and placing a dollar limit on gifts. Specifically, with respect to outside compensation, NYSE Rule 350(a)(1) prohibits any member, allied member, member organization or employee thereof from employing or compensating any person for services rendered without the prior consent of the person's employer (*i.e.*, the NYSE with respect to NYSE employees).[12] With respect to gifts, NYSE Rule 350(a)(2) prohibits giving any gift or gratuity in excess of $50 per person per year to any principal, officer, or employee of the NYSE or its subsidiaries without the prior written consent of the NYSE. This rule is written without regard to whether the NYSE employee has responsibility for regulatory matters affecting the member.

(2) Proposal

FINRA proposes that NASD Rule 3090 be transferred into the Consolidated FINRA Rulebook without material change,[13] renumbered as FINRA Rule 2070 and that the corresponding provisions in NYSE Rules 350(a)(1), 350(a)(2), 350.10, 407(a) and 407.10 be eliminated.[14] Rather than requiring the member to obtain FINRA's consent to open a securities or commodities account or execute a trade (as set forth under NYSE Rules 407(a) and 407.10), FINRA believes that it is sufficient, as set forth under NASD Rule 3090(a), to continue to require the member to obtain and implement an instruction from the FINRA employee directing the member to provide duplicate statements to FINRA. The proposed rule change would, as set forth in NASD Rule 3090(b), continue to prohibit members from making any loan of money or securities to a FINRA employee, subject to the exceptions set forth in that rule. Lastly, the proposed rule change would, as set forth in NASD Rule 3090(c), continue to prohibit members from directly or indirectly giving, or permitting to be given, anything above nominal value to any FINRA employee who has responsibility for a ''regulatory matter'' involving the member. FINRA does not believe that its employees should be permitted to receive gifts of up to $50 per year when such employees have responsibility for a regulatory matter. In addition, FINRA proposes not to adopt the $50 limit in NYSE Rule 350(a)(2) for gifts to all other employees to maintain consistency with the FINRA Code of Conduct, which, like NASD Rule 3060(a) (and proposed FINRA Rule 3220(a)), establishes a $100 limit. Rule 3090(c) need not be amended to address the employment and compensation issues as to NYSE employees in NYSE Rules 350(a)(1) and 350.10 because the FINRA Code of Conduct addresses these issues through its provisions on Outside Activities or Employment.

FINRA proposes to delete listing and delisting proceedings as potential ''regulatory matters'' under NASD Rule 3090(c) in light of FINRA's separation from NASDAQ and The American Stock Exchange.

(2) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change would streamline and reorganize existing rules that govern influencing or rewarding the employees of others and transactions involving FINRA employees. Further, the proposed rule change would provide greater regulatory clarity with respect to these issues.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–FINRA–2008–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–027. 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/*

[11] NYSE Rule 407(a) requires duplicate confirmations and account statements with respect to accounts or transactions of members, allied members and employees associated with another member or member organization.

[12] NYSE Rule 350.10 provides that requests for NYSE consent under Rule 350(a)(1) should be sent to the NYSE's Human Resources Department at least 10 days in advance of the proposed date of employment. NYSE Rule 350.10 states that approval to employ an NYSE employee outside the hours of regular employment by the NYSE will be limited to employment of a routine or clerical nature. NYSE Rule 350.10 further states that when the NYSE has granted permission for part-time employment of a NYSE employee, no approval is required for a subsequent gratuity or bonus to such person provided it is in proportion to gratuities given to full-time employees of the employing organization.

[13] The proposal includes stylistic edits to NASD Rule 3090 for purposes of clarity and readability.

[14] With respect to NYSE Rule 407(a), the only change to the rule at this stage in the rulebook consolidation would be to delete language pertaining to employees of the NYSE. *See* Exhibit 5. NYSE Rule 407.10 would be deleted in its entirety. With respect to NYSE Rules 350(a)(1), 350(a)(2) and 350.10, *see supra* notes 8 and 9.

[15] 15 U.S.C. 78o–3(b)(6).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–027 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18460 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58289; File No. SR–ISE–2008–62]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules Related to the Imposition of Fines for Minor Rule Violations

August 1, 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 July 30, 2008, the International Securities Exchange, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Rule 1614—Imposition of Fines for Minor Rule Violations to increase the summary fines for violations of Rule 412—Position Limits. The text of the proposed rule change is available at ISE, *http://www.ise.com*, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase and strengthen the sanctions imposed pursuant to its Minor Rule Violation Plan (''MRVP'') in connection with any member or customer who exceeds the Exchange's position limits in accordance with Exchange Rule 412. The Exchange believes that increasing the fine levels specified, consolidating individual members, member organizations, and customers into one category, and lengthening the surveillance period from a 12-month period to a rolling 24-month period will serve as an effective deterrent to such violative conduct. In addition, the Exchange, as a member of the Intermarket Surveillance Group (''ISG''), as well as certain other self-regulatory organizations (''SROs'') on October 29, 2007 executed and filed with the Commission a final version of an Agreement pursuant to Section 17(d) of the Act (the ''17d–2 Agreement'').[5] The members of the ISG intend to enter into an amendment to the 17d–2 Agreement in the near future concerning the surveillance and sanctions of position limit violations. As such, the SROs have agreed that their respective rules concerning position limits regarding options contracts are common rules. As a result, the proposal to amend the Exchange's MRVP will further result in consistency in sanctions among the SROs that are signatories to the 17d–2 Agreement and the forthcoming amendment concerning position limit violations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, this proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Section 240.19d–1(c)(2) of the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Letter to Richard Holley, Division of Market Regulation, Securities and Exchange Commission from Nyieri Nazarian, Assistant General Counsel, American Stock Exchange, October 29, 2007.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.19d–1(c)(2).

comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[11]

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission hereby grants the Exchange's request and believes that doing so is consistent with the protection of investors and the public interest.[12] The Exchange's proposed rule change is based on a similar proposal that was previously approved by the Commission [13] and does not raise any novel or significant issues. Therefore, the Commission designates the proposed rule change operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2008–62 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18367 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. ISE has satisfied this requirement.

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] *See* Securities Exchange Act Release No. 58119 (July 8, 2008), 73 FR 40646 (July 15, 2008) (SR–CBOE–2008–53).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58282; File No. SR–NASDAQ–2008–067]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Letters of Guarantee for Options Participants

August 1, 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 July 29, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change for the NASDAQ Options Market (''NOM'') to modify Chapter VII, Section 8 of its options rules to require Letters of Guarantee for each options participant, rather than each market maker.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

Chapter VII Market Participants

* * * * *

Sec. 8 Letters of Guarantee

(a) Required of Each *Options Participant* [Market Maker]. No *Options Participant* [Market Maker] shall make any transactions on NOM unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with Nasdaq Regulation, and unless such Letter of Guarantee has not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of The NASDAQ Stock Market, LLC found at *http://nasdaq.cchwallstreet.com/.*

been revoked pursuant to paragraph (c) of this Section.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has determined that requiring a Letter of Guarantee for each options participant would decrease the individual risk exposure of each options participant as well as the systemic risk of exposure to Nasdaq's options marketplace. Requiring a Letter of Guarantee of market makers provides a measure of protection but it does not provide protection with respect to options participants that enter orders and liquidity into the market in the same fashion as market makers but to a lesser degree. It will also provide incremental protection to clearing brokers by providing advanced notice and requiring acknowledgment that a new firm will be using their clearing services.

Nasdaq's determination is based in part on conversations with current options participants as well as potential options participants. It is also based on Rule 3.28 of the Chicago Board Options Exchange which requires letters of guarantee for all trading activity on that exchange regardless of whether the firm is a registered specialist or not. In addition, all options participants are required by Chapter VI, Section 15 of Nasdaq's options rules to document its relationship with a clearing firm by submitting one of several documents, including a Letter of Guarantee.

Nasdaq will work with its membership to ensure full and timely compliance with this proposed rule change. While many members are familiar with Letters of Guarantee through, for example, compliance with Chapter VI, Section 15 or their membership at other exchanges, Nasdaq will provide all members 45 days from the date of filing of the proposed rule change to comply with the new requirement. In addition, Nasdaq will issue an Options Trader Alert to members explaining the new requirement and providing notice of the compliance date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934, in general and with Section 6(b)(5) of the Act, in particular, in that it is designed 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange. The proposed changes are consistent with the statute in that they are designed to facilitate transactions in options on the Nasdaq Options Market by minimizing counter-party risk and encouraging participants to provide liquidity in Quarterly Options Series.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance competition and is based upon the rules of another national securities exchange that trades standardized options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Nasdaq will make the proposed rule change operative 45 days from the date of filing this proposal.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–067. 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

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

Nasdaq's principal office. All Comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–067, and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18383 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58299; File No. SR–NYSE–2008–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Enable the Exchange To Determine That a Company Meets the Exchange's Market Value Requirements by Relying on a Third-Party Valuation of the Company

August 4, 2008.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 31, 2008, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend sections 102.01B and 102.01C of the Exchange's Listed Company Manual (the ''Manual'') to provide that the Exchange will, on a case by case basis, exercise discretion to list a company whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. The proposed amendment would permit the Exchange to determine that such a company has met its market value requirements by relying on a third-party valuation of the company.

The text of the proposed rule change is available at *http://www.nyse.com,* the NYSE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend sections 102.01B and 102.01C of the Manual to provide that the Exchange will, on a case by case basis, exercise discretion to list a company whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. The proposed amendment would allow the Exchange to determine that such a company has met its market value requirements by relying on a third-party valuation of the company.

Section 102.01B of the Manual requires that companies listing on the Exchange in connection with their initial public offering (''IPO'') or as a result of a spin-off or under the Affiliated Company standard must have $60 million in market value of publicly-held shares at the time of listing and all other companies must have a market value of publicly-held shares of $100 million.[4] In addition, the Valuation/Revenue with Cash Flow, Pure Valuation/Revenue, and Affiliated Company standards of Section 102.01C require global market capitalization of $500 million, $750 million, and $500 million, respectively. Sections 102.01B and 102.01C provide that, in connection with a company's IPO, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard. In the case of a spin-off, the company may rely on a letter from the parent company's investment banker or other financial adviser.

The Exchange has in recent years been approached by a number of private companies that would like to list upon the effectiveness of a selling shareholder registration statement. These private companies typically have sold a significant amount of their common stock to qualified institutional buyers in one or more private placements and, as a condition to those sales, will have agreed to file a registration statement to facilitate the resale of the privately-placed shares. These companies may meet all of the financial criteria for listing on the Exchange, except that they have not had any prior public market for their common stock and they are not contemplating an underwritten offering in connection with their selling shareholder registration statement. As such, the Exchange cannot rely on trading on any predecessor public market to evaluate the company's market value, as would be possible with a company transferring from another market. Nor is there a public offering whose price would provide the basis for a letter of the type provided by underwriters for companies listing in conjunction with an IPO.

The Exchange believes that a company of this sort which otherwise meets the Exchange's listing criteria should not be barred from listing. As such, the Exchange proposes to list such companies if there is available an independent third-party valuation of the company (a ''Valuation'') and information regarding trading in a private placement trading market that, taken together, provide evidence that the company meets the relevant market value tests.

Therefore, the Exchange proposes to amend sections 102.01B and 102.10C to provide that, in the case of a company whose stock is not previously registered under the Exchange Act that is listing upon effectiveness of a registration statement without a related underwritten offering, the Exchange will have the discretion to determine that such company has met the applicable

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares.

market value requirements based on a combination of both (i) a Valuation and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a ''Private Placement Market''). The Exchange will attribute a market value to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the applicable standard.

The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

Companies listed on the basis of a Valuation will be required to meet the $100 million test applied to companies transferring from another market under section 102.01B, rather than the $60 million IPO standard. Companies listing under the Valuation/Revenue with Cash Flow standard of section 102.01C(II)(a) of the Manual and the Affiliated Company standard of section 102.01C(III) will be required to have a global market capitalization of $600 million, rather than the usual $500 million requirement. Companies listing under the Pure Valuation/Revenue standard of section 102.01C(II)(b) will be required to have $900 million of global market capitalization, rather than the usual $750 million requirement.

The Exchange acknowledges that a Valuation is only an estimate of what a company's true market value will be upon commencement of public trading. The Exchange also acknowledges that Private Placement Markets generally do not have the depth of liquidity of the public trading markets and may therefore be an imperfect guide as to the likely performance of a security upon listing. However, the Exchange believes that the trading price in a Private Placement Market will provide evidence as to the reliability of a Valuation and that, by assuming a market value equal to the lesser of the Valuation and a value based on the most recent Private Placement Market trading, the Exchange will be using a conservative estimation of a company's market value. Additionally, by applying the $100 million transfer market value requirement rather than the $60 million IPO requirement of Section 102.01B, along with imposing market value requirements under section 102.01C that are 20% higher than the normal standards, the Exchange believes that it can have sufficient comfort that companies listed pursuant to this proposed procedure will evidence appropriate levels of market value immediately upon the commencement of public market trading. Furthermore, Exchange staff will consider each Valuation with care and, giving due consideration to the reputation and experience of the third party provider of the Valuation, make an individualized determination as to whether it is appropriate to utilize the Exchange's discretion to list a company on the basis of this proposed procedure. In making that determination, Exchange staff will consider the appropriateness of relying on Private Placement Market trading in light of the volume and degree of price volatility of such trading. As with all other listing applicants, the Exchange reserves the right to deny listing to any company seeking to utilize the provisions of this proposed rule amendment if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest.

Any company listing in reliance upon this proposed amendment will be required to meet the IPO distribution requirements of section 102.01A, i.e., 400 beneficial holders of round lots of 100 shares and 1,100,000 publicly held shares. The Exchange will rely upon information provided by the company's transfer agent in determining whether the company meets the holders requirement. The Exchange will be able to determine compliance with the 1,100,000 publicly held shares requirement by reviewing the disclosure in the company's registration statement.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5) [5] 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. In particular, the Exchange believes that the safeguards it has included in its proposed amendment are sufficient to ensure that companies that are listed pursuant to the proposed Valuation procedure will evidence their compliance with the applicable market value requirements immediately after commencement of listed trading, thereby protecting investors by ensuring a liquid market in such companies' stocks.

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 purpose of the Exchange 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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

[5] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–68 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18369 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58301; File No. SR–NYSE–2008–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Section 902.09 of the Listed Company Manual To Establish Fees for Securities Listed Under Sections 703.21 and 703.22 of the Listed Company Manual and Traded on NYSE Bonds and To Waive Fees for Structured Products Transferred From the Amex to the NYSE

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 24, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.09 of the Listed Company Manual (the ''Manual'') to extend the initial and continued listing fees charged thereunder to securities listed under Section 703.21 (Equity-Linked Debt Securities) and Section 703.22 (Index-Linked Securities) and traded on NYSE Bonds. In addition, the Exchange proposes to waive, in connection with transfers to the NYSE from NYSE Alternext US [3] after the closing of the purchase of the American Stock Exchange LLC (the ''Amex'') by NYSE Euronext (the ''Merger''), (i) all fees payable under Section 902.08 in connection with such transfers, and (ii) in the case of securities that will be traded on NYSE Bonds, all fees payable under Section 902.09 in connection with such transfer, including the prorated annual fee payable for the calendar year in which the transfer occurs. The fee waiver described in the previous sentence will only apply (i) if such transfer occurs during the calendar year in which the Merger is consummated and (ii) if the Merger is consummated no later than March 31, 2009.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] After the Merger, the name of the Amex will be changed to NYSE Alternext U.S. LLC and the revised rule text in Exhibit 5 reflects that name change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 902.09 of the Manual to extend the initial and continued listing fees charged thereunder to securities listed under Section 703.21 (Equity-Linked Debt Securities) and Section 703.22 (Index-Linked Securities) and traded on NYSE Bonds. In addition, the Exchange proposes to waive, in connection with transfers to the NYSE from NYSE Alternext U.S. after the closing of the Merger, (i) all fees payable under Section 902.08 in connection with such transfers, and (ii) in the case of securities that will be traded on NYSE Bonds, all fees payable under Section 902.09 in connection with such transfer, including the prorated annual fee payable for the calendar year in which the transfer occurs. The fee waiver described in the previous sentence will only apply (i) if such transfer occurs during the calendar year in which the Merger is consummated and (ii) if the Merger is consummated no later than March 31, 2009.

The Exchange has noted that it does not currently set forth in the Manual any listing fees for securities that are listed under either Section 703.21 (Equity-Linked Debt Securities) or Section 703.22 (Index-Linked Securities) and traded on NYSE Bonds. The Exchange has not previously listed any securities under Sections 703.21 or 703.22 that traded on NYSE Bonds and, as a consequence, this filing is adopting fees for such listings for the first time. We have determined that the most appropriate fee schedule for these securities is that set forth in Section 902.09.

NYSE Euronext, the ultimate parent company of the Exchange, has agreed to acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. It is currently anticipated that the acquisition will be consummated during the third quarter of 2008.[4] In connection with the acquisition, NYSE Euronext intends to discontinue the listing on NYSE Alternext U.S. of bonds and structured products issued in $1,000 face amounts. To the extent that these securities qualify for listing under the applicable NYSE standards, the Exchange will encourage the issuers to apply to list those securities on the NYSE for trading on NYSE Bonds. As the issuers of these securities will already have paid listing fees to NYSE Alternext U.S. and will be transferring to the NYSE as a result of a business decision made by NYSE Euronext, the Exchange proposes to waive all listing fees that would be payable in connection with the listing of securities transferred from NYSE Alternext U.S. and traded on NYSE Bonds, including securities listed under Sections 703.19, 703.21 and 703.22[5]. This waiver will only take effect upon consummation of NYSE Euronext's acquisition of the Amex.

The Exchange believes the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory, in particular because, after the Merger, NYSE Regulation, Inc. (''NYSE Regulation'') will perform listed company regulation for both the Exchange and NYSE Alternext U.S., including a substantial review of companies upon original listing. Many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to Amex companies after the Merger. Securities transferring from NYSE Alternext U.S. will be subjected to the same rigorous regulatory review as any other applicant for listing on the Exchange. However, the Exchange expects that, on average, the review of securities transferring from NYSE Alternext U.S. to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any Amex-listed company, and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange and in conducting ongoing compliance activities with respect to any such company. Furthermore, the Exchange anticipates that the revenue it foregoes as a consequence of this waiver will be an immaterial amount that would not have any impact on its ability to finance its regulatory activities. In addition, in light of the low level at which fees are set for listing on NYSE Bonds, the associated loss of revenue will be immaterial and will not impact the Exchange's ability to finance its regulatory activities.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)[6] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because it is simply a recognition of the fact that companies transferring their listing from NYSE Alternext U.S. will already have paid fees to another exchange which will, upon consummation of the acquisition, be under the same ownership as the Exchange. The Exchange believes that the fee waiver is appropriate because the same regulatory staff will review securities on all three markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any companies that transfer. In addition, in light of the low level at which fees are set for listing on NYSE Bonds, the associated loss of revenue will be immaterial and will not impact the Exchange's ability to finance its regulatory activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–2008–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–56. 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

[4] The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. The sole remaining condition to the consummation of the transaction is the approval by the Division of Trading and Markets of certain rule filings the NYSE and Amex expect to submit in the near future.

[5] As annual fees for listed securities are calculated based on the number of securities outstanding on January 1 and billed on an annual basis, the proposed fee waiver will not apply to additional securities of a class that has been transferred from NYSE Alternext U.S. that are issued after the date of transfer.

[6] 15 U.S.C. 78f(b)(4).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–56 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18370 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58303; File No. SR–NYSE–2008–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Sections 305 and 308 and the Shareholder Rights Provisions of Section 314 of the Listed Company Manual

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2008, the New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Sections 305 (''Concentration of Voting Power'') and 308 (''Defensive Tactics'') and the shareholder rights provisions of Section 314 (''Special Rights of Certain Shareholders'') of the Exchange's Listed Company Manual (the ''Manual''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The Exchange proposes to eliminate from its Manual Sections 305 (''Concentration of Voting Power'') and 308 (''Defensive Tactics'') and the shareholder rights provisions of Section 314 (''Special Rights of Certain Shareholders''). Section 305 provides that, while a significant concentration of a company's common stock in one holding is not a bar to listing, the Exchange will consider the existence of such a concentrated position in rendering a decision to list that company. Section 308 deals with provisions that discriminate among shareholders or nullify or reduce the voting power of common stockholders. Section 314 expresses the Exchange's concern about the existence of special rights limited to one shareholder or a group of shareholders, such as the right to sell stock back to the company or preemptive rights (*i.e.*, the right to purchase stock from the company at the time of any sale to any other party, so as to maintain that shareholder's proportionate interest in the company).[3]

The Exchange proposes to retain the related party transaction policy of Section 314. However, the Exchange proposes to delete that part of Section 314 which pertains to shareholder rights, as well as the entirety of Sections 305 and 308. The provisions that the Exchange proposes to eliminate each embody Exchange policies in relation to shareholder rights. As such, the Exchange believes that these rules no longer serve any purpose as they are superseded by the Exchange's shareholder rights policy as set forth in Section 313.

In 1994, at the suggestion of then SEC chairman Arthur Levitt, the NYSE, the American Stock Exchange (the ''Amex'') and NASD each agreed to adopt a uniform policy (the ''Uniform Voting Rights Policy'') with respect to the voting rights of common stockholders.[4] The NYSE adopted the Uniform Voting Rights Policy as an amendment to the Exchange's existing voting rights policy, Section 313 of the Manual. The NYSE adopted Section 313 in its earlier form in 1989,[5] intending that it would constitute the Exchange's only voting rights policy. To that end, the Exchange included in its filing in relation to the adoption of Section 313 a proposal to eliminate Section 308 of the Manual on the basis that it dealt with the same sorts of issues as Section 313 and was therefore redundant and superseded by Section 313. In approving Section 313 in 1989, the SEC stated that it was ''still reviewing [the Section 308] portion of the proposal'' and was therefore not approving the elimination of Section 308 at that time.

When the exchanges adopted the Uniform Voting Rights Policy, it was the Commission's stated intention that it would result in a uniform industry-wide approach to voting rights issues. In light of this philosophical approach, the Exchange has long believed that Sections 305, 308 and the shareholder rights provisions of Section 314 have been superseded by the Uniform Voting Rights Policy and that it is appropriate to consider shareholder rights issues solely in the context of Section 313. In the Exchange's experience, the continued presence of these provisions in the Manual causes occasional confusion among issuers and their

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section 314 also states an Exchange policy that an appropriate body within the company should examine the appropriateness of related party transactions. The Exchange does not propose to eliminate these provisions in this filing. However, the Exchange is making some nonsubstantive changes to these provisions.

[4] *See* Securities Exchange Act Release No. 35121 (December 19, 1994), 59 FR 66570 (December 27, 1994) (SR–NYSE–94–20).

[5] *See* Securities Exchange Act Release No. 27554 (December 20, 1989), 54 FR 53227 (December 27, 1989) (SR–NYSE–89–16).

counsel, raising concerns among issuers as to whether they are fully in compliance with Exchange rules even in the context of Exchange advice that their provisions do not violate Section 313. This can be problematic in particular in relation to companies that are considering transferring their listing from Nasdaq or the Amex, where those companies are experienced with dealing with the Uniform Voting Rights Policy as the sole authority in the shareholder rights area.

The Exchange believes that it is appropriate to eliminate Sections 305, 308 and the shareholder rights provisions of Section 314. Their continued existence is inconsistent with the intention that the Uniform Voting Rights Policy should be the sole controlling authority in the area of shareholder rights and the existence of this discrepancy between the Exchange and its competitors places the Exchange at a competitive disadvantage. The Exchange notes that neither Nasdaq nor the Amex has comparable rules to Sections 305, 308 and the shareholder rights provisions of Section 314. As such, the proposed elimination of these provisions is consistent with the philosophy that the Uniform Voting Rights Policy represents a common approach to shareholder rights across all of the major markets. It also eliminates a potential competitive advantage [sic] that the NYSE currently faces in competing for listings. Furthermore, the Exchange's experience with the Uniform Voting Rights policy is that it has been a successful mechanism for the prevention of abuses of shareholder rights. As such, the Exchange believes that the elimination of Sections 305, 308 and the shareholder rights provisions of Section 314 will not diminish the protections against such abuses currently afforded to listed company shareholders.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change promotes the mechanism of a free and open market by fully conforming the shareholder rights policies of the Exchange to those of Nasdaq and the Amex, eliminating a potential competitive disadvantage in competing for listings. The Exchange believes that the proposed amendment is consistent with the protection of investors and the public interest as the Exchange's continued application of the Uniform Voting Rights Policy will continue to provide significant protections with respect to shareholder rights.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the NYSE to immediately conform its shareholder voting rights rules to those of other exchanges by eliminating voting rights provisions that other exchanges do not have. The Commission believes that this should eliminate a potential competitive disadvantage that the NYSE currently faces in competing for listings. However, the Commission notes that the NYSE's current Uniform Voting Rights Policy should continue to provide important protections with regard to shareholder rights. For these reasons, the Commission designates that the proposed rule change become operative immediately.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–62. 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

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–62 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18372 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58290; File No. SR–NYSE–2008–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rules Governing Membership in Order To Waive-In Members in Good Standing of the American Stock Exchange LLC as Members and Member Organizations of the Exchange

August 1, 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 July 30, 2008, the New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend rules governing membership in order to waive-in members in good standing of the American Stock Exchange LLC as members and member organizations of the Exchange. The text of the proposed rule change is available at the NYSE's principal office, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the acquisition by NYSE Euronext of The Amex Membership Corporation, including the relocation of all equities trading conducted on or through the existing systems and facilities of the American Stock Exchange LLC (''Amex'') to the trading systems and facilities operated by the NYSE (the ''Equities Relocation''), the NYSE proposes to amend Rules 2, 300, and 304A in order to provide that all NYSE Alternext U.S. LLC (''NYSE Alternext'') member organizations and members in good standing are deemed qualified and approved as NYSE member organizations or members.

Background

NYSE Alternext Transaction

On January 17, 2008, the Amex Membership Corporation and NYSE Euronext entered into an Agreement and Plan of Merger (''Merger Agreement'') whereby, through a series of mergers, NYSE Euronext will acquire Amex, and, as a result of these mergers, Amex will become one of the U.S. wholly-owned subsidiaries of NYSE Group and will be renamed NYSE Alternext U.S. LLC (the ''Mergers'').[3]

As described more fully in the Merger Transaction filing, in connection with the Mergers, Amex proposes to demutualize by separating all trading rights from equity ownership in Amex. As part of the demutualization, those persons who were previously Amex Regular Members or Options Principal Members (''OPMs'') will receive a certain amount of NYSE Euronext stock. Once the Mergers close, all trading rights appurtenant to the Amex Regular Members' memberships or OPMs' memberships will be cancelled.

As proposed in the Merger Transaction filing, immediately following the closing of the Mergers, those persons and entities who were authorized to trade on the Amex before the closing of the Mergers, including Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members, will be deemed to have satisfied applicable qualification requirements necessary to trade in NYSE Alternext's demutualized marketplace and will be issued trading permits (referred to as ''86 Trinity Permits'') at no cost. The 86 Trinity Permit will authorize owners, lessees, or nominees of Amex Regular Members or OPMs, Amex limited trading permit holders, and Amex associate members who were authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York (the ''86 Trinity Trading Systems''). NYSE Alternext will recognize the former Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

In connection with the Mergers, NYSE Euronext intends to relocate all equities trading previously conducted on the 86 Trinity Trading Systems to the NYSE's trading systems and facilities located at 11 Wall Street, New York, New York (the ''NYSE Alternext Trading Systems''). The NYSE Alternext Trading Systems will be operated by the NYSE on behalf of NYSE Alternext. NYSE Alternext will also adopt a version of the NYSE's rules for trading equities on NYSE Alternext after the Equities Relocation.[4]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–Amex–2008–62 (the ''Merger Transaction filing'').

[4] *See* SR–Amex–2008–63 (the ''NYSE Alternext Equities filing'').

As described more fully in the NYSE Alternext Equities filing, the Equities Relocation will take place as soon as practicable after the closing of the Mergers. Similarly, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to new facilities of NYSE Alternext to be located at 11 Wall Street, which facilities will utilize a trading system based on the options trading system used by NYSE Arca, Inc. (''NYSE Arca'') (''Options Relocation,'' and, together with the Equities Relocation, the ''Relocations'').

Holders of the 86 Trinity Permits will be able to apply for an NYSE Alternext equities trading license or options trading permit upon the Equities or Options Relocations, as applicable. After the Equities Relocation, a holder of an 86 Trinity Permit will only be able to trade products other than those that have relocated to NYSE Alternext Trading Systems. After the Options Relocation, the 86 Trinity Permits will be canceled.[5]

As described more fully in the NYSE Alternext Equities Rule filing, NYSE Alternext is proposing to adopt rules governing member organizations that are closely modeled on existing NYSE Rules 2 and 300–313. These rules are substantially similar to current Amex rules concerning membership.[6] Nonetheless, the Exchange recognizes that, after the closing of the Mergers, there may be NYSE Alternext members or member organizations holding an 86 Trinity Permit that may not immediately qualify for membership under the NYSE Alternext Equities Rules. NYSE Alternext is proposing to continue to approve such members and member organizations as NYSE Alternext members and member organizations notwithstanding whether they meet the proposed new standards. Such approval would be conditioned upon the NYSE Alternext member or member organization meeting the requirements of the adopted rules within a grace period of six months from the date that the member organization receives its NYSE Alternext equities trading license in exchange for a valid 86 Trinity Permit. NYSE Alternext would revoke a member organization's approval to trade if it fails to meet the new membership qualifications by the close of the grace period. NYSE Alternext would also reserve the right to commence proceedings to terminate such a member organization's membership, if applicable.

In the NYSE Alternext Equities Rule filing, NYSE Alternext is also proposing to provide NYSE Alternext members with a grace period of six months within which to meet NYSE Alternext Equities proposed Rule 304A requirements to pass an examination required by the Exchange. This grace period would begin to run from the date that the individual member transfers to the NYSE Alternext Trading Systems, which may be a later date than the Equities Relocation.

NYSE and NYSE Alternext Membership Rules

After the Equities Relocation, 86 Trinity Permit holders who apply to receive an NYSE Alternext equities trading license will also receive an NYSE Market trading license. In order to effectuate the issuance of these licenses, several changes are necessary to both the NYSE's and NYSE Alternext's rules regarding membership so that both SROs will have consistent standards for membership. The changes to Amex/NYSE Alternext rules are addressed in the NYSE Alternext Equities Rule Filing;[7] this filing addresses the necessary changes to NYSE rules.

NYSE Rule 2 defines the terms ''member'' and ''member organization.'' Under NYSE Rule 2(b), a ''member organization'' means a registered broker or dealer (unless exempt pursuant to the Act) that is also a member of FINRA and has been approved by the Exchange to designate an associated natural person to effect transactions on the Floor of the Exchange. The term also includes any natural person so registered and approved and who directly effects transactions on the Floor of the Exchange.[8] NYSE Rule 2(a) provides that a ''member'' includes any person associated with and designated by a member organization to effect transactions on the Floor of the Exchange.

NYSE Rule 300 requires members and member organizations to have a trading license in order to effect transactions on the Floor of the Exchange or through any facility thereof. Only qualified and approved NYSE member organizations may acquire and hold a trading license. An NYSE member organization that holds a trading license may designate an NYSE member to effect transactions on its behalf on the Floor of the Exchange.

Proposed Amendments to Exchange Rules

The Exchange proposes to add supplementary material to NYSE Rule 2 to provide that an NYSE Alternext member organization is deemed qualified and approved as an NYSE member organization and thus eligible to hold an NYSE trading license. The Exchange further proposes that Exchange membership would be automatic for NYSE Alternext member organizations and that such NYSE Alternext member organizations would be exempt from the Exchange's new member organization application fee, as required by NYSE Rule 311(a) and set forth on the NYSE Price List. In addition, the Exchange proposes that any natural persons associated with an NYSE Alternext member organization and who has been approved by NYSE Alternext as a member and has been designated by an NYSE Alternext member organization to effect transactions on the Floor of NYSE Alternext would be deemed approved as an NYSE member.

As proposed, NYSE Alternext member organizations and members that have been approved as member organizations and members by NYSE Alternext and that seek an NYSE Alternext equities trading license would be automatically waived in as NYSE member organizations and members. In this regard, the NYSE notes that NYSE Alternext will have the same standard for membership as the NYSE, so that if NYSE Alternext determines that an applicant is qualified to be an NYSE Alternext member organization, the NYSE will accept NYSE Alternext's determination as conclusive evidence that the applicant is eligible for NYSE membership. In accordance with the Mergers, NYSE Alternext will certify to the Exchange that all such transferring members met the Amex's minimum membership standards at the time that they were approved for membership and that nothing has come to the attention of NYSE Alternext that would disqualify any of these members. If an 86 Trinity Permit is revoked for any reason, such NYSE Alternext member organization would not be deemed eligible to be approved as an NYSE member organization.

The Exchange is also proposing to adopt a temporary rule to apply to any NYSE Alternext member organizations that were approved as NYSE Alternext member organizations because they were a holder of an 86 Trinity Permit. Pursuant to proposed Rule 300.10T, which is closely modeled on the version of a similar rule in the NYSE Alternext

[5] *See* SR–Amex–2008–62.

[6] *See* NYSE Rules 300–313 and Amex Rules 300, 301, 310, 311, 312, 341, 353, 356, and 359 and Article IV of the Amex Constitution.

[7] *See* SR–Amex–2008–63.

[8] The term ''member organization'' also includes ''member firm'' and ''member corporation.'' *See* NYSE Rule 2(b)(iii).

Equities filing, the Exchange would provide NYSE Alternext member organizations with a six-month grace period within which to meet the requirements of Exchange rules governing membership. Such grace period would begin to run from the date that the NYSE Alternext member organization transfers its equities operations to the NYSE Alternext Trading Systems pursuant to a valid 86 Trinity Permit. If a member organization fails to meet the requirements of Exchange rules governing membership by the close of the grace period, the Exchange would revoke a member organization's approval to trade. The Exchange would also reserve the right to commence proceedings to terminate such a member organization, if applicable.

The Exchange notes that the current Amex rules governing membership are substantially similar to Exchange rules governing membership.[9] An Exchange requirement that the Amex currently does not have is that a member organization must submit an opinion of counsel that a member corporation's stock is validly issued and outstanding and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective.[10] Accordingly, if a NYSE Alternext member organization has not previously provided such an opinion of counsel to Amex, it must be provided to NYSE Alternext within six months of the member organization transferring its equities operations to the NYSE Alternext Trading Systems pursuant to a valid 86 Trinity Permit.[11]

Similar to the NYSE Alternext Equities Rule filing, the Exchange proposes that NYSE Alternext members be provided a grace period of six months within which to meet NYSE Rule 304A requirements to pass an examination required by the Exchange. The Exchange believes that this grace period should begin to run from the date that the individual member transfers to the NYSE Alternext Trading Systems, which may be a later date than the Equities Relocation. In addition, the Exchange proposes adding temporary Rule 304A.90T to address any changes that an approved person may have to make in connection with being associated with an Exchange member organization.

Finally, the Exchange proposes providing a temporary exemption from the Rule 2 requirement that all member organizations be a FINRA member for those NYSE Alternext member organizations that: (i) Hold a valid 86 Trinity Permit as of the date that the NYSE Alternext member organization transfers its equities operations to NYSE Alternext Trading Systems; (ii) are not currently a FINRA member; and (iii) are eligible for FINRA's waive-in membership process under FINRA's proposed Interpretive Material 1013–2.[12] The Exchange proposes a 60-day grace period for such NYSE Alternext member organizations to apply for and be approved as FINRA members. Such grace period would run from the date that the NYSE Alternext member organization transfers its equities operation to NYSE Alternext Trading Systems pursuant to a valid 86 Trinity Permit, which may be a later date than the Equities Relocation.

The proposed changes to Exchange rules are contingent on the approval of the Merger Transaction filing, the closing of the Mergers, and the approval of the NYSE Alternext Equities Rule filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[13] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investors' orders in the best market.

Specifically, because NYSE and NYSE Alternext intend to have identical membership standards, the NYSE believes that amending NYSE Rule 2 to permit the cross-licensing of members and member organizations based on approval from only one of the two self-regulatory organizations will remove an impediment to free and open markets by eliminating unnecessary regulatory duplication in the membership process. Through this regulatory streamlining, the NYSE and NYSE Alternext will enable broker-dealers to more efficiently enter both the NYSE and NYSE Alternext market centers to begin providing services on behalf of their customers. At the same time, the NYSE notes that this proposal will not in any way lessen the regulatory scrutiny that new NYSE members receive (and therefore does not adversely affect the public interest or investor protection), since, prior to the NYSE deeming their applications approved, applicants will have been reviewed and approved by a self-regulatory organization that is applying the same standard as the NYSE itself would apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 NYSE 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

[9] Compare NYSE Rules 311–313 with Amex Rules 300, 301, 310, 311, 312, 341, 353, 356, and 359 and Article IV of the Amex Constitution.

[10] *See* NYSE Rule 313.20.

[11] The Exchange rules governing membership impose certain ongoing obligations on member organizations that are not contained in the Amex membership rules and which NYSE Alternext member organizations would need to meet. *See* NYSE Rules 311(b)(7), 312(f)(2), 313.10, 313.21, and 313.23.

[12] *See* SR–FINRA–2008–043.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–70 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–70 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18374 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 58266; File No. SR–NYSEArca–2008–80]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Eliminating Certain Obsolete Rules

July 30, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 24, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules in order to remove obsolete and unnecessary rule text related to information that is now obsolete. These changes are being made for administrative purposes only. By abolishing these out-dated references, the Exchange is not changing or altering any obligations, rights, policies or practices enumerated within its rules. The text of the proposed rule change is available at the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing by NYSE Arca is to remove obsolete and unnecessary rule text in several of its rules. By abolishing these out-dated references, the Exchange is not changing or altering any obligations, rights, policies or practices enumerated within its rules.

In September 2006, the Exchange revised its rules to conform to Regulation NMS.[4] At that time, there was a transitional period where the pre-NMS version of certain rules were in effect until a specified date (February 5, 2007), after which the new NMS version of the rule would take effect. As a result, there are several Exchange rules that contain both pre-NMS provisions as well as current applicable provisions. In fact, many of the Exchange's rules are identified either as operative through February 5, 2007 or operative after February 5, 2007. Retaining these outdated pre-NMS provisions fosters unnecessary confusion. The Exchange proposes to amend its rules to remove this text that is both unnecessary and, by its very terms, obsolete.

The specific proposed changes are discussed in further detail below.

• Rule 1.1: This rule sets forth certain definitions and references that are in effect at NYSE Arca. By this proposal, the Exchange is eliminating obsolete terms that were identified as being in effect until February 5, 2007 while maintaining (without revision) the currently operative terms that were identified as having taken effect as of February 5, 2007, as shown below.

■ Rule 1.1(aa): The Exchange is deleting the out-dated definition of the term ''Nasdaq Security'' while retaining the currently operative definition of the same term.

■ Rule 1.1(dd): The Exchange is deleting the out-dated definition of the term ''NBBO'' while retaining the currently operative definition of the same term.

■ Rule 1.1(rr): The Exchange is deleting the out-dated definition of the term ''Security'' while retaining the currently operative definition of the same term.

■ Rule 1.1(ddd): The Exchange is deleting the unnecessary reference to the operative date of the definition of the term ''NMS Stock'' while retaining

[4] *See* Securities Exchange Act Release No. 54549 (September 29, 2006), 71 FR 59179 (October 6, 2006) (SR–NYSEArca–2006–59).

the currently operative definition of the same term.

■ Rule 1.1(eee): The Exchange is deleting the unnecessary reference to the operative date of the term ''Protected Bid, Protected Offer, Protected Quotation'' while retaining the currently operative definition of the same term.

■ Rule 1.1(fff): The Exchange is deleting the unnecessary reference to the operative date of the term ''Trade-Through'' while retaining the currently operative definition of the same term.

■ Rule 1.1(ggg): The Exchange is deleting the unnecessary reference to the operative date of the term ''Trading Center'' while retaining the currently operative definition of the same term.

■ Rule 1.1(hhh): The Exchange is deleting the unnecessary reference to the operative date of the term ''Effective National Market System Plan, Regular Trading Hours'' while retaining the currently operative definition of the same term.

• Rule 7.1, Hours of Business: The Exchange is hereby eliminating the obsolete rule text that was identified as being in effect until February 5, 2007 while maintaining (without revision) the currently operative rule text that was identified as having taken effect as of February 5, 2007.

• Rule 7.18, Trading in Nasdaq Securities: The Exchange is hereby eliminating the obsolete rule text that was identified as being in effect until February 5, 2007 while maintaining the currently operative rule text that was identified as having taken effect as of February 5, 2007.

■ Rule 7.18(c), Applicability. According to this sub-section, ''the following Rules of the Corporation will not be applicable to transactions on the Corporation in Nasdaq Securities: Rules 7.55–7.57.'' This section is obsolete and unnecessary. Rule 7.55 concerns the retired Intermarket Trading System Plan (''ITS Plan'') and Rules 7.56–7.57 are marked as inoperative as of February 5, 2007. Accordingly, the Exchange is deleting this rule text as obsolete. As outlined below, the Exchange is also proposing to delete all references to the retired ITS Plan.

• Rule 7.28, NMS Market Access: The Exchange is deleting the unnecessary reference to the operative date of the rule (February 5, 2007) while retaining the currently operative rule text.

• Rule 7.31, Orders and Modifiers: This Rule defines certain orders available on the Exchange and explains their operability. By this proposal, the Exchange is eliminating the obsolete rule text that was identified as being in effect until February 5, 2007, while maintaining (without revision) the currently operative rule text that was identified as having taken effect as of February 5, 2007.

• Rule 7.35, Auctions: This Rule defines certain available auctions on the Exchange and their operability. The Exchange is hereby deleting Rule 7.35(f)(3)(D), pertaining to ITS, which had been marked as inoperative after February 5, 2007.

• Rule 7.37, Order Execution: This Rule sets forth the priority of execution of the Exchange's available order types. The Exchange is eliminating the obsolete rule text that was identified as being in effect until February 5, 2007, while maintaining the currently operative rule text that was identified as having taken effect as of February 5, 2007. With one exception, the Exchange is not altering or revising the currently operative text of Rule 7.37. Specifically, with respect to the introductory paragraph to Rule 7.37, the Exchange is proposing to delete the references to the ITS Plan and certain order interaction therewith.

• Rule 7.40, Trade Execution and Reporting: By this proposal, the Exchange is eliminating the obsolete rule text that was identified as being in effect until February 5, 2007, while maintaining (without revision) the currently operative rule text that was identified as having taken effect as of February 5, 2007.

• Rule 7.55, Definitions: This Rule concerns the ITS Plan and was marked as operative through February 5, 2007. The ITS Plan has been retired and the Rule is not operative by its very terms. The Exchange is hereby deleting this Rule in its entirety.

• Rule 7.56, ITS ''Trade-Throughs'' and ''Locked Markets'': This Rule concerns the ITS Plan and was marked as operative through February 5, 2007. The ITS Plan has been retired and the Rule is not operative by its very terms. The Exchange is hereby deleting this Rule in its entirety.

• Rule 7.57, Block Trade Policy: By this proposal, the Exchange is eliminating this obsolete Rule that was identified as being in effect until February 5, 2007.

• Rule 7.58, Compliance with Two-Sided Quote Requirement in ITS Plan: This Rule concerns the ITS Plan and was marked as operative through February 5, 2007. The ITS Plan has been retired and the Rule is not operative by its very terms. The Exchange is hereby deleting this Rule in its entirety.

• Rule 7.65(J). The Exchange is hereby eliminating the out-dated and unnecessary reference to the ITS Plan. The Exchange is not making any other changes to Rule 7.65, Portfolio Crossing Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[5] in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will eliminate unnecessary confusion in its rule structure by removing outdated and obsolete rule references.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[5] 15 U.S.C. 78(f)(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–80. 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 NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–80, and should be submitted on or before September 2, 2008.

[10] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18382 Filed 8–8–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58295; File No. SR–NYSEArca–2008–75]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services In Order To Revise Certain Transaction Fees

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2008, NYSE Arca, Inc. (''NYSE Arca'' 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 prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') in order to revise certain Transaction Fees. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the existing Schedule in order to (i) make changes to Transaction Fees assessed on certain executions in issues that trade as part of the Penny Pilot,[5] and (ii) eliminate the Market Maker Post Liquidity Incentive Credit. A description of the proposed change follows.

Post/Take Pricing

NYSE Arca offers market participants a Post/Take pricing model for electronically executed transactions in issues that are included in the Penny Pilot. Under the present rate schedule, all electronic orders that ''take'' liquidity from the Consolidated Book (incoming electronic quotes and orders that are executed upon receipt) are charged a fee of $0.45 per contract. NYSE Arca now proposes to revise the Post/Take pricing it applies to transactions in selected Penny Pilot issues that the Exchange has designated as ''Tier 1'' issues. Specifically the Exchange will: (a) Raise the Take Liquidity fee, in certain highly active issues, from $0.45 to $0.55 per contract for all market participants; (b) raise the Post Liquidity credit, in certain highly active issues, from $0.30 to $.40 for Lead Market Makers and NYSE Arca Market Makers; and (c) raise the Post Liquidity credit, in certain highly active issues, from $0.25 to $0.35 for both electronic broker-dealer and electronic customer transactions.

The new fee will initially apply to transactions in the following ten (10) option issues that the Exchange has designated as Tier 1 Penny Pilot issues.

AAPL Apple Inc
CSCO Cisco Systems, Inc.
DIA Diamonds Trust
MSFT Microsoft Corporation
IWM iShares Russell 2000 Index
QQQQ PowerShares QQQ Trust
RIMM Research in Motion

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. *See* Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (Order approving SR–NYSEArca–2007–88).

XLF Financial Select Sector SPDR
SPY S&P 500 Depository Receipts
YHOO Yahoo! Inc.

The Exchange may periodically review the list of securities included in the Penny Pilot and will make a determination as to the appropriateness of the Tier 1 designation for certain issues. NYSE Arca notes that the primary criteria for designating a Tier 1 is overall cleared national options volume, however, the Exchange notes that this list is not necessarily limited to, or inclusive of, the most active issues. The Exchange may take into consideration other factors, including but not limited to, transactions and options volume at NYSE Arca for a given issue (both electronic and manual), the implied volatility of the underlying issue and the per-share price of the underlying issue. Any future changes to the list of Tier 1 issues would only be effective pursuant to a subsequent Rule 19b–4 filing with the Commission.

Market Maker Post Liquidity Incentive Credit

The Exchange offers Market Makers, who reach a certain level of trade activity in Penny Pilot issues, a reduced transaction rate by offering a fee credit on contracts executed over and above certain volume thresholds. The Exchange established the fee credit as a way to incentivize Market Making firms to transact a larger share of their overall options business on NYSE Arca.

Since its inception, the fee credit has failed to meet the expected results that the Exchange was looking for. Therefore, NYSE Arca now proposes to eliminate the Market Maker Post Liquidity Incentive Credit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. In addition, the Commission seeks comment on the following:

1. The Commission requests comment generally on the impact, if any, of the increased Take Liquidity fee on the ability of members and other market participants to obtain fair and efficient access to NYSE Arca quotations in the Tier 1 classes.

2. Broker-dealers have a duty of best execution when executing customer orders.[10] In addition, the options exchanges are required under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') to have in place rules that require their members to avoid trade-throughs.[11] The Commission requests comment on the impact of exchange fees on the ability of members to satisfy these regulatory obligations. More specifically, the Commission requests comment on the impact of NYSE Arca's increase to the Take Liquidity fee, if any, on the ability of broker-dealers and other market participants to fulfill these responsibilities.

3. The Commission notes that, in addition to direct or indirect access to NYSE Arca systems by or through its members, market participants are able to access NYSE Arca quotations through the Intermarket Option Linkage (''Linkage'').[12] The Commission requests comment on whether market participants currently are able to access NYSE Arca quotations in a reasonable and efficient manner through the Linkage. Would this analysis change if the fees charged for orders electronically executed through the Linkage (''Linkage Fees'') were increased? [13]

4. As noted above, this proposal increases the Take Liquidity fee charged to members of NYSE Arca for the Tier 1 classes. The Exchange also has filed a companion proposed rule change to increase the Linkage Fee in Tier 1 classes to $0.55.[14] That proposal will not be effective unless approved by the Commission. Thus, the Linkage Fee currently remains at $0.45. The Commission requests comment on whether the analysis as to the impact of the increased Take Liquidity fee for members on the ability of broker-dealers and other market participants to satisfy their regulatory obligations would change if the Linkage Fee for executing orders in the Tier 1 classes also increased.

5. The Commission requests comment on the impact, if any, of the increased Take Liquidity fee on the usefulness and accuracy of displayed quotations in the Tier 1 classes. Do high fees for accessing quotations, as well as wide disparity in the level of fees for accessing quotations, detract from the usefulness and accuracy of the prices of the displayed quotations?

6. The Commission requests comment on whether there should be a limit on the maximum fee that NYSE Arca, or any other options exchange, can charge for access to is quotations.[15]

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See, e.g.*, *Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 269–70, 274 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq*, Securities Exchange Act Release No. 40900 (Jan. 11, 1999) (settled case) (citing *Sinclair* v. *SEC*, 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes*, 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes* v. *SEC*, 174 F.2d 969 (D.C. Cir. 1949)). *See also* Order Execution Obligations, Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) (''Order Handling Rules Release'').

[11] Linkage Plan Section 8(c) and NYSE Arca Rule 6.94.

[12] Linkage is governed by the Options Linkage Authority under the conditions set forth under the Linkage Plan. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

[13] *See* infra note 14.

[14] *See* SR–NYSEArca–2008–76 (submitted July 14, 2008).

[15] The Commission notes that Citadel has filed a Petition for Rulemaking to Address Excessive Access Fees in the Options Markets addressing this issue. *See* Letter from John C. Nagel, Managing

7. The Commission further requests comment on whether, if a commenter believes that a fee cap should be imposed, such fee cap should apply only to transactions effected by non-members through Linkage, or whether a fee cap should apply to member access as well. Would capping the maximum transaction fee that options exchanges charge non-members prevent or mitigate the negative consequences of unreasonably high access fees for members?

8. If a commenter believes that a fee cap should be imposed, the Commission specifically requests comment as to what level would be appropriate. For example, the Petition proposes an access fee limit of 20%, or $0.20 per contract ($0.002 per underlying share). Are there other fee cap structures that would be more appropriate for the options markets then the percentage of the minimum quoting increment model?

9. Further, the Commission requests comment as to whether such a fee cap should apply only to the best bid and offer of each exchange, or also to access to ''depth of book'' quotations.

10. The Commission requests comment as to whether the use of ''maker-taker'' pricing by options exchanges has led, or is likely to lead, to an increase in locked and crossed markets.

11. The Commission requests comment as to the impact, if any, on the use of the ''maker-taker'' pricing model on the quoted spread widths and sizes of registered options market makers in the classes subject to such pricing model. If a commenter believes that the ''maker-taker'' model has had an impact on the quality of quoted prices, the Commission requests comment as to whether there is sufficient liquidity in the classes subject to the model from market participants other than registered market makers. Would the analysis change if a similar pricing model were proposed for all options?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2008–75 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18386 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

Director & Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 15, 2008 (''Petition'').

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58297; File No. SR–NYSEArca–2008–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Waive Annual Fees for Securities Transferring to NYSE Arca From NYSE Alternext U.S.

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 23, 2008, NYSE Arca, Inc. (''NYSE Arca'' 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes that securities transferring to NYSE Arca from NYSE Alternext U.S.[3] after the closing of the purchase of the American Stock Exchange LLC by NYSE Euronext (the ''Merger'') will not be charged any prorated Annual Fee for the remainder of the year in which the Merger takes place. The fee waiver in the preceding sentence will be of no further effect if the closing of the Merger does not take place by March 31, 2009.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes that securities transferring to NYSE Arca from NYSE Alternext U.S. after the closing of the Merger will not be charged any prorated Annual Fee for the remainder of the year in which the Merger takes place. The fee waiver in the preceding sentence will be of no further effect if the closing of the Merger does not take place by March 31, 2009.

NYSE Euronext, the ultimate parent company of the Exchange, has agreed to

[3] After the closing of the Merger, the Amex will be renamed NYSE Alternext U.S. LLC.

acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. It is currently anticipated that the acquisition will be consummated during the third quarter of 2008.[4] In connection with the acquisition, the Exchange anticipates that some issuers of NYSE Alternext U.S.-listed securities that qualify for listing on the Exchange may choose to transfer their listing to the Exchange. Consequently, the Exchange proposes to grant issuers transferring the listing of their securities to the Exchange from NYSE Alternext U.S. during the calendar year in which the Merger is consummated a waiver of the prorated annual listing fee that would normally be payable in connection with the first partial calendar year of listing on the Exchange. The Exchange believes this is appropriate as issuers transferring to the Exchange from NYSE Alternext U.S. will already have paid annual continued listing fees to the Amex for the calendar year in which they transfer. The proposed fee waiver will have no further effect if the Merger is not consummated by March 31, 2009.

The Exchange believes this proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory, in particular because, after the Merger, NYSE Regulation, Inc. (''NYSE Regulation'') will perform listed company regulation for both the Exchange and NYSE Alternext U.S., including a substantial review of companies upon original listing. Many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to NYSE Alternext U.S. securities after the Merger. Securities transferring from NYSE Alternext U.S. will be subjected to the same rigorous regulatory review as any other securities with respect to which an application for listing is made to the Exchange. However, the Exchange expects that, on average, the review of securities transferring from NYSE Alternext U.S. to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any NYSE Alternext U.S.-listed issuer, and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the issuer for listing on the Exchange and in conducting ongoing compliance activities with respect to any such issuer.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)[5] that an exchange has rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because it is simply a recognition of the fact that issuers transferring the listing of securities from NYSE Alternext U.S. will already have paid fees to another exchange which will at that time be under the same ownership as the Exchange. The Exchange believes that the fee waiver is appropriate because the same regulatory staff will review securities on both markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any issuers that transfer their securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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–NYSEArca–2008–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–78 and should be submitted on or before September 2, 2008.

[4] The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. The sole remaining condition to the consummation of the transaction is the approval by the Division of Trading and Markets of certain rule filings the NYSE and Amex expect to submit in the near future.

[5] 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18387 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58306; File No. SR–NYSEArca–2008–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection With the Proposed Acquisition of The Amex Membership Corporation

August 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Exchange Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, a Delaware Corporation and registered national securities exchange is submitting this proposed rule change to the Commission in connection with the proposed acquisition of The Amex Membership Corporation (''MC''), a New York not-for-profit corporation that owns 100% (99% directly and 1% indirectly through a wholly owned subsidiary) of American Stock Exchange LLC, a Delaware limited liability company and registered national securities exchange (''Amex''), by NYSE Euronext, the Delaware corporation that indirectly owns 100% of the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this proposed rule change to the Commission in connection with the proposed acquisition of MC, a New York not-for-profit corporation that owns 100% of Amex, by NYSE Euronext. The proposed acquisition will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of January 17, 2008 (as it may be amended from time to time, the ''Merger Agreement''), by and among NYSE Euronext, Amsterdam Merger Sub, LLC, a Delaware limited liability company and a wholly owned subsidiary of NYSE Euronext formed by NYSE Euronext in connection with the Mergers (''Merger Sub''), MC, AMC Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of MC (''AMCAS''), American Stock Exchange Holdings, Inc., a Delaware corporation and a wholly owned subsidiary of MC created by MC in connection with the Mergers (''Holdings''), Amex, which is 99 percent owned by MC and 1 percent owned by AMCAS, and American Stock Exchange 2, LLC, a Delaware limited liability company and a wholly owned subsidiary of Holdings formed by Holdings in connection with the Mergers (''Amex Merger Sub'').

Under the terms of the Merger Agreement, MC will demutualize and NYSE Euronext will acquire the business of MC and its subsidiaries through a series of mergers (the ''Mergers''). Following the Mergers, Merger Sub, a wholly owned subsidiary of NYSE Euronext and a successor to MC and AMCAS, will directly own 100% of Amex Merger Sub, which will be the successor to Amex and a registered national securities exchange. It is intended that Amex Merger Sub will be renamed ''NYSE Alternext U.S. LLC'' (and therefore is referred to in this document as ''NYSE Alternext U.S.''). The proposed rule change will not become operative until completion of the Internal Merger (as defined below).

Corporate Structure

Immediately following the NYSE/Amex Merger, NYSE Euronext will contribute 100% of the limited liability company interest of Merger Sub to NYSE Group, Inc. (''NYSE Group'') (such contribution, the ''Contribution''), causing Merger Sub to become a direct wholly owned subsidiary of NYSE Group. Immediately following the Contribution, Merger Sub will merge with and into NYSE Alternext U.S., a direct wholly owned subsidiary of Merger Sub (''Internal Merger''). As a result of the Contribution and the Internal Merger, NYSE Alternext U.S. will become a direct wholly owned subsidiary of NYSE Group.

Organizational Documents of NYSE Euronext

Currently the NYSE Euronext organizational documents provide certain protections to the Exchange and New York Stock Exchange LLC that are designed to protect and facilitate their self-regulatory functions. In general, the organizational documents of NYSE Euronext are being amended to provide similar protections to NYSE Alternext U.S. as are currently provided to the Exchange and New York Stock Exchange LLC under those documents. In addition, in the proposed new Director Independence Policy for NYSE Euronext directors, the three-year retrospective period (''look-back period'') over which directors' relationships with members of the Exchange and New York Stock Exchange LLC are reviewed (which following the Mergers will apply equally to NYSE Alternext U.S.) has been reduced to one year. The Exchange believes that this reduction will be beneficial in expanding NYSE Euronext's pool of eligible director candidates with knowledge of the exchange industry, while still maintaining sufficient director independence.

The amended and restated bylaws of NYSE Euronext are being amended to:

• Include NYSE Alternext U.S. in the definition of ''U.S. Regulated Subsidiaries,'' which currently includes New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

NYSE Arca Equities, Inc. and to provide that the term ''U.S. Regulated Subsidiaries'' includes those entities listed or their successors, but only so long as they continue to be controlled, directly or indirectly, by NYSE Euronext;

• Provide that the provisions referencing New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and NYSE Arca Equities, Inc. apply with respect to those entities or their successors, but only so long as they or their successors continue to be controlled, directly or indirectly, by NYSE Euronext;

• Provide the same protection to confidential information pertaining to the self-regulatory function of NYSE Alternext U.S. or its successor (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the U.S. Regulated Subsidiaries, that shall come into the possession of NYSE Euronext, as is currently provided under the bylaws of NYSE Euronext with respect such confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, and NYSE Arca Equities, Inc., but only to the extent that NYSE Alternext U.S. and its successor continues to be controlled, directly or indirectly by NYSE Euronext;

• Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext U.S. (or its successor), the board of directors of NYSE Euronext shall not adopt any resolution pursuant to clause (2) of Section 1(B) of Article V of the certificate of incorporation of NYSE Euronext unless the board of Directors of NYSE Euronext shall have determined that:

• In the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such Person nor any of its Related Persons (as defined in the certificate of incorporation of NYSE Euronext) is, with respect to NYSE Alternext U.S. (or its successor), a ''member,'' as defined in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act [5] (a ''NYSE Alternext Member'') (any such person that is a ''Related Person'' (as defined in the Certificate of incorporation of NYSE Euronext) of such NYSE Alternext Member is also deemed to be a ''NYSE Alternext Member'' for the purposes of the proposed Second Amended and Restated Bylaws of NYSE Euronext, as the context may require); and

• In the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of NYSE Euronext that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article V of the certificate of incorporation of NYSE Euronext, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of NYSE Euronext that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of NYSE Euronext that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), neither such Person nor any of its Related Persons is, with respect to NYSE Alternext U.S. (or its successor), a NYSE Alternext Member;

• Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext U.S. (or its successor), the board of directors of NYSE Euronext shall not adopt any resolution pursuant to clause (2) of Section 2(B) of Article V of the certificate of incorporation of NYSE Euronext (which relates to NYSE Euronext board of directors approval of ownership of NYSE Euronext capital stock in excess of 20%), unless the board of directors of NYSE Euronext shall have determined that neither such Person nor any of its Related Persons is, with respect to NYSE Alternext U.S. (or its successor), a NYSE Alternext Member;

• Provide that, for so long as NYSE Euronext controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the bylaws of NYSE Euronext must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act [6] and the rules promulgated thereunder or (ii) submitted to the boards of directors of the New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, NYSE Arca Equities, Inc. and NYSE Alternext U.S. or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by the NYSE Euronext, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act [7] and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be;

• Provide that, for as long as NYSE Euronext Controls any European Market Subsidiary (as defined in the bylaws of NYSE Euronext), any amendment to or repeal of the bylaws of NYSE Euronext must either be (i) filed with or filed with and approved by a European Regulator (as defined in the bylaws of NYSE Euronext) under European Exchange Regulations (as defined in the bylaws of NYSE Euronext) or (ii) submitted to the boards of directors of the European Market Subsidiaries and, if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by a European Regulator under European Exchange Regulations before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the relevant European Regulator(s);

• Provide that so long as NYSE Euronext shall control, directly or indirectly, NYSE Alternext U.S. (or its successor), the board of directors of NYSE Euronext shall not adopt any resolution to repeal or amend any provision of the Certificate of Incorporation unless such amendment or repeal shall either (i) be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act [8] and the rules promulgated thereunder or (ii) be submitted to the board of directors of NYSE Alternext U.S. (or the board of directors of its successor), and if such board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act [9] and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed

[5] 15 U.S.C. 78c(a)(3)(A).

[6] 15 U.S.C. 78s.

[7] *Id.*

[8] *Id.*

[9] *Id.*

with or filed with and approved by the Commission, as the case may be; and

• Remove or update certain references to the Combination Agreement, dated as of June 1, 2006, as amended and restated as of November 24, 2006, by and among the NYSE Euronext, NYSE Group, Inc., Euronext N.V. and Jefferson Merger Sub, Inc.

The proposed new independence policy of the NYSE Euronext board of directors will be substantially similar to the current Commission-approved independence policy of the NYSE Euronext board of directors,[10] except that:

• The independence policy provision relating to relationships with New York Stock Exchange LLC and Exchange market participants have been expanded to equally apply to relationships with NYSE Alternext U.S. market participants (or the market participants of its successor);

• Instead of relying on the definition of ''member'' or ''member organization'' or similar terms in the rules of the individual exchanges, the proposed new independence policy relies on the definition of ''member'' in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act.[11] This technical change is designed to harmonize the use of those terms in the proposed new independence policy with respect to each of the Exchange, New York Stock Exchange LLC, and NYSE Alternext U.S. and to simplify the language of the policy;

• Independence requirements for the NYSE Alternext U.S. board of directors (or the board of directors of its successor) have been added that are the same as those for New York Stock Exchange LLC's board of directors;

• The ''look back period'' with respect to directors' relationships with members of the Exchange and New York Stock Exchange LLC (which following the Mergers will apply equally to NYSE Alternext U.S.) has been reduced from three years to one year;

• All references to New York Stock Exchange LLC, the Exchange, NYSE Arca Equities, Inc., and NYSE Alternext U.S. shall mean each of those entities or its successor; and

• The provision providing for a transition period so that the independence requirements of the NYSE Euronext director independence policy would not apply to the European Persons on the NYSE Euronext board of directors until the annual meeting of NYSE Euronext stockholders in 2008 has been deleted since the revised NYSE Euronext Independence Policy is expected to go into effect after the meeting of NYSE Euronext Stockholders in 2008.

Organizational Documents of NYSE Group

Currently the NYSE Group organizational documents provide certain protections to the Exchange and New York Stock Exchange LLC that are designed to protect and facilitate their self-regulatory functions. In general, the organizational documents of NYSE Group are being amended to provide similar protections to NYSE Alternext U.S. as are currently provided to the Exchange and New York Stock Exchange LLC under those documents.

The amended and restated certificate of incorporation of NYSE Group is being amended to:

• Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Group directly or indirectly controls NYSE Alternext U.S. (or its successor), the board of directors of NYSE Group shall not adopt any resolution pursuant to clause (ii) of Section 4(b)(1)(A) of Article IV of the certificate of incorporation of NYSE Group unless the board of Directors of NYSE Group shall have determined that:

• In the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such Person nor any of its Related Persons (as defined in the certificate of incorporation of NYSE Group) is, with respect to NYSE Alternext U.S. (or its successor), a ''member,'' as defined in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and (3)(a)(3)(A)(iv) of the Exchange Act[12]) (a ''NYSE Alternext Member'') (any such person that is a Related Person (as defined in the Second Amended and Restated Certificate of Incorporation of NYSE Group) of such NYSE Alternext Member is also deemed to be an ''NYSE Alternext Member'' for purposes of the proposed Second Amended and Restate Certificate of Incorporation of NYSE Group, as the context may require); and

• In the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of NYSE Group that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article IV of the certificate of incorporation of NYSE Group, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of NYSE Group that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of NYSE Group that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), neither such Person nor any of its Related Persons is, with respect to NYSE Alternext U.S. (or its successor), a NYSE Alternext Member;

• Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Group directly or indirectly controls NYSE Alternext U.S. (or its successor), the board of directors of NYSE Group shall not adopt any resolution pursuant to clause (ii) of Section 4(b)(2)(B) of Article IV of the certificate of incorporation of NYSE Group (which relates to NYSE Group board of directors approval of ownership of NYSE Group capital stock in excess of 20%), unless the board of directors of NYSE Group shall have determined that neither such Person nor any of its Related Persons is, with respect to NYSE Alternext U.S. (or its successor), a NYSE Alternext Member;

• Include NYSE Alternext U.S. in the definition of ''Regulated Subsidiaries,'' which currently includes New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and NYSE Arca Equities, Inc. and to provide that the term ''Regulated Subsidiaries'' includes those entities listed or their successors, but only so long as they continue to be controlled, directly or indirectly, by NYSE Group;

• Provide the same protections to all confidential information pertaining to the self-regulatory function of NYSE Alternext U.S. as are currently provided under the Amended and Restated Certificate of Incorporation of NYSE Group to confidential information pertaining to the self regulatory function of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, and NYSE Arca Equities, Inc.;

• Provide that any amendment to or repeal of the certificate of incorporation of NYSE Group must either be (i) filed with or filed with and approved by the Commission under Section 19 of the

[10] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120).

[11] 15 U.S.C. 78c(a)(3)(A).

[12] 15 U.S.C. 78c(a)(3)(A).

Exchange Act [13] and the rules promulgated thereunder or (ii) submitted to the boards of directors of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, NYSE Arca Equities, Inc. and NYSE Alternext U.S. or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by the NYSE Group, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act [14] and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

The amended and restated bylaws of NYSE Group are being amended to:

• Provide that any amendment to or repeal of the bylaws of NYSE Group must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder or (ii) submitted to the boards of directors of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, NYSE Arca Equities, Inc. and NYSE Alternext U.S. or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by the NYSE Group, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

Trust Agreement of the NYSE Group Trust I

The Trust Agreement is being amended to make certain technical changes designed to better provide NYSE Alternext U.S. with the same protections against certain material adverse changes in European Law that it currently provides for the Exchange and New York Stock Exchange LLC.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act,[15] in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act [16] and Rule 19b–4(f)(6) thereunder.[17] As required under Rule 19b–4(f)(6)(iii) under the Exchange Act,[18] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. The Exchange represents that the proposed rule change is substantially the same as the proposed rule change filed by New York Stock Exchange LLC related to the acquisition of MC by NYSE Euronext (the ''NYSE Rule Filing'').[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–82 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSEArca–2008–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–82 and should be submitted on or before September 2, 2008.

[13] 15 U.S.C. 78s.

[14] *Id.*

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] SR–NYSE–2008–60. Specifically, the Exchange represents that each exhibit filed with the proposed rule filing is identical to the corresponding exhibit filed with the NYSE Rule Filing.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18422 Filed 8–8–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58312; File No. SR–NYSEArca–2008–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the MacroShares Medical Inflation Trusts

August 5, 2008.

On June 13, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Amend NYSE Arca Equities Rule 8.400 (Paired Trust Shares); and (2) list and trade shares of the MacroShares Medical Inflation Up Trust Series 2008–1 (''Up Trust'') and shares of the MacroShares Medical Inflation Down Trust Series 2008–1 (''Down Trust'' and, together with the Up Trust, the ''Trusts'').[3] The proposed rule change was published for comment in the **Federal Register** on July 2, 2008.[4] The Commission received no comments on the proposal. On July 31, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of filing of Amendment No. 1 to the proposed rule change,[5] and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposal

A. Amendments to NYSE Arca Equities Rule 8.400

The Exchange proposes to amend NYSE Arca Equities Rule 8.400 governing Paired Trust Shares to allow for the listing and trading of ''Trading Shares,'' a proposed new type of Paired Trust Share. Currently, NYSE Arca Equities Rule 8.400 defines Paired Trust Shares to include only Holding Shares, which are issued by a matched pair of Trusts (''Holding Trusts'') in exchange for cash, and Tradeable Shares, which are issued by a different pair of Trusts (''Tradeable Trusts'') in exchange for the deposit of Holding Shares.

Under the proposed amendments to NYSE Arca Equities Rule 8.400, the term ''Paired Trust Shares'' refers to: (1) Both Holding Shares and any related Tradeable Shares; or (2) solely ''Trading Shares,'' which is a new defined term. As proposed, Trading Shares has the same definition as Holding Shares, except that it is not required that a majority of Trading Shares be acquired and deposited in a related Tradeable Trust, as it is with Holding Shares. The Exchange represents that there are no substantive differences between the proposed Paired Trust Shares structure (*i.e.*, a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (*i.e.*, a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that invest in financial instruments).

B. Listing and Trading of the Shares

The Up Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis at the direction of authorized participants. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The assets of each Trust will consist of an income distribution agreement and settlement contracts entered into with the other Trust. Under the income distribution agreement, as of any distribution date, each Trust will either: (1) Be required to pay a portion of its available income to the other Trust; or (2) be entitled to receive all or a portion of the other Trust's available income, based, in each case, on the Applicable Reference Value of Medical Inflation (the ''Applicable Reference Value,'' as defined below) for each day during the preceding calculation period. Under each settlement contract, in connection with the final scheduled termination date, an early termination date or any redemption date, each Trust will either: (1) Be required to make a final payment out of its assets to the other Trust; or (2) be entitled to receive a final payment from the other Trust out of the assets of the other Trust, based, in each case, on the Applicable Reference Value for the period from the closing date through the date of redemption. Each Trust will also hold U.S. Treasuries and repurchase agreements on U.S. Treasuries to secure its obligations under the income distribution agreement and the settlement contracts.

Each Trust will make quarterly distributions of income on the treasuries and a final distribution of all assets it holds on deposit on the final scheduled termination date, an early termination date or a redemption date. Each quarterly and final distribution will be based on the value for the medical care component of the Consumer Price Index for All Urban Consumers (''CPI–U''), as calculated and published monthly by the Bureau of Labor Statistics (''BLS'') at *www.bls.gov*.[6] The medical care component of the CPI–U reflects inflation in the cost of medical goods and services. The Applicable Reference Value is a daily linear interpolation based on the monthly values of the medical care component of the CPI–U for the preceding two months, and is the Reference Price for purposes of NYSE Arca Equities Rule 8.400, on the basis of which quarterly and final distributions on the Up MacroShares and Down MacroShares are calculated. The Applicable Reference Value is determined for each calendar day using a formula set forth in the Up Trust Registration Statement. For purposes of determining the Applicable Reference Value, following the monthly publication by the BLS, any corrections to the CPI–U values released for any calendar month will not be taken into consideration or used to recalculate the underlying value of the Shares.

With respect to the Up Trust, if the ratio of the Applicable Reference Value on any day to the Applicable Reference Value on the closing date (the date on which the Trusts entered into an income

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The shares of the Up Trust are referred to as Up MacroShares, the shares of the Down Trust are referred to as Down MacroShares, and the Up MacroShares and Down MacroShares are referred to collectively as the ''Shares.''

[4] *See* Securities Exchange Act Release No. 58024 (June 25, 2008), 73 FR 38003.

[5] Amendment No. 1 provided additional detail regarding the availability of the Applicable Reference Value (as defined herein) and other information relating to the Shares. The amendment also clarifies proposed NYSE Arca Equities Rule 8.400(d)(2)(ii), which describes a circumstance in which Paired Trust Shares will be delisted. Specifically, the amendment makes clear that the Exchange will delist any type of Paired Trust Shares (not just Tradeable Shares) for which an intraday Reference Price is calculated and disseminated if the intraday Reference Price is not calculated or disseminated as required by the Rule.

[6] The BLS publishes a summary of its methodology for calculating the CPI at *www.bls.gov/cpi/*. In addition, a manual entitled BLS Handbook of Methods, in which a chapter is dedicated to calculation methodology for the CPI, may be accessed on the BLS Web site at *www.bls.gov/opub/hom/pdf/homch17.pdf*.

distribution agreement) exceeds the hurdle rate (''Hurdle Rate''),[7] compounded on an annualized basis for the period from the closing date to the day of measurement, the underlying value of the Up Trust on the next business day will include all of its assets plus a portion of the assets of the paired Down Trust. This portion of assets due from the Down Trust will be multiplied by the leverage factor (''Leverage Factor'').[8] Conversely, if this ratio is less than the compounded hurdle rate, the Up Trust's underlying value will decrease, because a portion of its assets will be included in the underlying value of its paired Down Trust. This portion of assets due to the Down Trust will be multiplied by the Leverage Factor.

With respect to the Down Trust, if the ratio of the Applicable Reference Value on any day to the Applicable Reference Value on the closing date (the date on which the Trusts entered into an income distribution agreement) exceeds the Hurdle Rate, compounded for the period from the closing date to the day of measurement, the underlying value of the Down Trust on the next business day will decrease, because a portion of its assets will be included in the underlying value of its paired Up Trust. This portion of assets due to the Up Trust will be multiplied by the Leverage Factor. Conversely, if this ratio is less than the compounded Hurdle Rate, the Down Trust's underlying value will increase, because a portion of the assets of the Up Trust will be included in the underlying value of the Down Trust. This portion of assets due from the Up Trust will be multiplied by the Leverage Factor.

The Up MacroShares may be issued only in MacroShares Units consisting of a minimum of 50,000 Up MacroShares issued by the Up Trust and 50,000 Down MacroShares issued by the Down Trust. The Up Trust and Down Trust will issue their shares in the minimum amounts that constitute a MacroShares Unit on an ongoing basis only to persons who qualify as authorized participants at the per-share underlying value of those shares on the business day on which a creation order for the shares is delivered to and accepted by MacroMarkets LLC, the administrative agent.[9] The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

Up MacroShares must be redeemed together with Down MacroShares by any holder who is an authorized participant on any business day in MacroShares Units consisting of a minimum of 50,000 Up MacroShares and 50,000 Down MacroShares, at the respective per Share underlying values of those Shares, as measured on the applicable redemption date.

More information regarding the Shares, the Up Trust and the Applicable Reference Value, Income Distribution, Redemption Final Distribution, Risks, Fees and Expenses, Termination Triggers, and Creation and Redemption Procedures can be found in the Up Trust Registration Statement and Down Trust Registration Statement.[10]

1. Availability of Information

At the beginning of each business day, not later than one hour prior to the commencement of trading in the Core Trading Session on the Exchange, State Street Bank and Trust Company, the trustee for the Up Trust and the Down Trust, will calculate the underlying values of the Up Trust and the Down Trust and the per Share underlying values of the Up MacroShares and Down MacroShares. The trustee will then provide such values to the administrative agent, who will post them on its Web site located at *www.macromarkets.com*. Intraday indicative values for the Shares will not be calculated. The trustee will base its calculation of underlying value for any business day on the administrative agent's calculation of the Applicable Reference Value[11] for the preceding day (regardless of whether that preceding day is a business day or non-business day),[12] which it will provide to the trustee. The underlying values will be disseminated to all market participants at the same time.

Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of major newspapers and will be available from major market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

2. Initial and Continued Listing Criteria

NYSE Arca Equities Rule 8.400(d) sets forth initial and continued listing criteria applicable to Paired Trust Shares. A minimum of 100,000 Up MacroShares and 100,000 Down MacroShares will be required to be outstanding at the commencement of trading. In addition, the Exchange will obtain a representation on behalf of the Up Trust and the Down Trust that the underlying values per Share of the Up Shares and Down Shares will be calculated daily and will be made available to all market participants at the same time. The Exchange will remove from listing the Up MacroShares or the Down MacroShares under the circumstances outlined in the proposed amendments to NYSE Arca Equities Rule 8.400(d) for Trading Shares, which include:

- If, after the initial twelve-month period following the commencement of trading of the Shares, (A) the Up Trust or the Down Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up MacroShares or Down MacroShares, respectively, for 30 or more consecutive trading days; (B) if the Up Trust or the Down Trust has fewer than 50,000 Up MacroShares or Down MacroShares, respectively, issued and outstanding; or (C) if the combined market value of all Shares issued and outstanding for the Up Trust and the Down Trust combined is less than $1,000,000;
- If a replacement benchmark is selected for the determination of the Applicable Reference Value, unless the Exchange files with the Commission a related proposed rule change pursuant to Rule 19b–4 under the Act[13] seeking

[7] The hurdle rate has been designated as 4.50%. This rate is fixed during the term of the Trusts. The Up Trust Registration Statement provides a description for calculating a hypothetical ''per share underlying value'' for any date, which is the amount an investor would be entitled to receive as a final distribution on that date if the paired trusts were to settle the settlement contracts and the Up Trust were to make a final distribution on Up MacroShares.

[8] The leverage factor is 2, and is fixed for the term of the Trusts.

[9] Authorized participants must also pay a transaction fee of $2,000 for any paired redemption or issuance and, for any paired issuance directed prior to July 1, 2008, a fee equal to 3.00% of the aggregate par amount of paired shares being created.

[10] The Exchange states that the income distribution agreement and applicable settlement contracts will be attached as Exhibits to the Registration Statements. On January 25, 2008, the depositor filed with the Commission Amendment No. 1 to Registration Statement on Form S–1 for the Up MacroShares (File No. 333–147948). The Exchange states that the depositor will file with the Commission a Registration Statement on Form S–1 for the Down MacroShares prior to commencement of trading in the Shares on the Exchange.

[11] The Applicable Reference Value (the Reference Price for the Shares) is a daily linear interpolation based on the monthly values of the medical care component of the CPI–U for the preceding two months, and it will not be re-calculated or disseminated intraday.

[12] The daily value of the Applicable Reference Value on the preceding day will be based upon the value of the medical component of the CPI–U that was calculated and published by the BLS for the second and third preceding calendar months.

[13] 17 CFR 240.19b–4.

approval to continue trading the Up MacroShares or Down MacroShares and such rule change is approved by the Commission; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

3. Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. NYSE Arca Equities Rule 8.400(d)(2) also provides that the Exchange will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, if the circuit breaker parameters of NYSE Arca Equities Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in the Up MacroShares or the Down MacroShares, the Exchange may consider other factors that may be relevant.

If the Exchange becomes aware that the underlying value per Share of each Up Share and Down Share is not disseminated to all market participants at the same time, it will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, until such time as the underlying value per share is available to all market participants.

4. Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

5. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[14] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

6. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) What the Shares are; (2) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a),[15] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Bulletin will reference that the Shares are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

[14] For a list of the current members of ISG, *see www.isgportal.org.*

[15] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115).

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[16] and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be 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.

A. Amendments to NYSE Arca Equities Rule 8.400

NYSE Arca Equities Rule 8.400 governs the listing and trading of Paired Trust Shares. The definition of Paired Trust Shares is currently limited to Holding Shares and Tradeable Shares.[19] The Exchange proposes to broaden the definition of Paired Trust Shares to include Trading Shares. The structure of Trading Shares differs from the structures described under the current NYSE Arca Equities Rules governing Paired Trust Shares in that, for Trading Shares, there are no Holding Trusts and there is only one set of trusts (*i.e.*, the ''Up Trust'' and the ''Down Trust'') instead of two. As noted above, the Exchange has represented that there are no substantive differences between the proposed structure (a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (in which a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that invest in financial instruments).

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Trading Shares on the Exchange. Previously, the Commission found that the current rules governing the listing and trading of Paired Trust Shares are consistent with

[16] 15 U.S.C. 78f.

[17] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* current NYSE Arca Equities Rule 8.400(b)(1).

Section 6(b)(5) of the Act.[20] Given the substantial similarities between Holding Shares, Tradeable Shares, and Trading Shares, the Commission believes that including Trading Shares within the Exchange's existing regime for listing and trading Paired Trust Shares is appropriate and does not raise any regulatory issues. The Commission notes that it recently approved a proposal by another national securities exchange which also included Trading Shares as part of its rules relating to Paired Trust Shares.[21]

The Commission believes that the proposal should help to facilitate the listing and trading of additional types of exchange-traded products that should enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the Commission believes that the listing and trading criteria for Trading Shares set forth in proposed NYSE Arca Equities Rule 8.400 are reasonably designed to protect investors and the public interest, as discussed herein.

B. Listing and Trading the Shares

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. The Exchange states that information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and that the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of major newspapers and will be available from major market data vendors. At the end of each business day, the administrative agent (MacroShares Markets LLC) will also calculate the premium or discount of the midpoint of the bid/offer to the underlying value per Share for both the Up MacroShares and the Down MacroShares for that day at the close of the Exchange's Core Trading Session. The premium/discount calculation will be conducted after such underlying values are calculated and provided to the administrative agent by the trustee and after the Exchange provides the administrative agent with the closing price for the Up MacroShares and Down MacroShares as of 3:59:59 (Eastern Time). The administrative agent will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site (*www.macromarkets.com*).

At the beginning of each business day, not later than one hour prior to the commencement of trading in the Core Trading Session on the Exchange, the trustee for the Up Trust and the Down Trust will calculate the underlying value of the Up Trust and the Down Trust and the per Share underlying values of the Up MacroShares and Down MacroShares. The trustee will then provide such values to the administrative agent, who will post them on its Web site, which is accessible to the public free of charge. The Exchange represents that the underlying values of the Trusts will be disseminated to all market participants at the same time.

The administrative agent will also determine daily the Applicable Reference Value, which it will disseminate to all market participants at the same time by posting it on its Web site.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation on behalf of the Trusts that the per-Share net asset values for the Trusts will be calculated daily and made available to all market participants at the same time. Additionally, the Exchange will halt trading in the Shares if it becomes aware that the per-Share values of the Up Trust or the Down Trust are not disseminated daily to all market participants at the same time.

As noted above, neither an indicative value for the Shares nor the Applicable Reference Value (the Reference Price for the Shares, for purposes of NYSE Arca Equities Rule 8.400) will be calculated or disseminated intraday. Instead, the per Share underlying values of the Up MacroShares and Down MacroShares and the Applicable Reference Value will be calculated and disseminated daily. The Commission believes that, because the Applicable Reference Value is a daily linear interpolation based on the monthly values of the medical care component of the CPI–U for the preceding two months, daily dissemination of the Applicable Reference Value and underlying values of the Trusts will be sufficient to provide market participants an approximation of the value of the Shares.

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.

(2) Prior to the commencement of trading, the Exchange will inform its members and Member Organizations an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) What the Shares are; (b) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) trading information; (f) that the Shares are subject to various fees and expenses described in the Registration Statements; [23] and (g) any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[24]

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[25] for approving the proposal, as

[20] *See* Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253, 1256 (January 10, 2007) (SR–NYSEArca–2006–75).

[21] *See* Securities Exchange Act Release No. 58057 (June 30, 2008), 73 FR 38474 (July 7, 2008) (SR–Amex–2008–36).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] *See supra* note 10.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the **Federal Register**.[26] In Amendment No. 1, NYSE Arca provided additional information concerning the dissemination of information relating to the Shares, and clarified the continued listing requirement with respect to the calculation and dissemination of an intraday Reference Price.[27] Accordingly, Amendment No. 1 does not raise any new issues about the proposed rule change, and the Commission finds good cause for approving the NYSE Arca's proposal, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–63 and should be submitted on or before September 2, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2008–63), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18486 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[26] Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[27] *See supra* note 5.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58292; File No. SR–DTC–2008–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Implement Processing Enhancements to the Profile Modification System Used in the Direct Registration System

August 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 7, 2008, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change No. SR–DTC–2008–07. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the DTC.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is proposing to enhance its Profile Modification System in order to allow a ''move all'' instruction and to allow a second taxpayer identification number or social security number to be used to verify instructions, DTC is also proposing to impose new participant fees to reimburse transfer agents for the cost of implementing and maintaining the proposed Profile enhancements.

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 DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Direct Registration System (''DRS'') allows investors to hold their securities positions on the records of the issuer in book-entry form rather than in certificated form. In May 2000, DTC established the Profile Modification System (''Profile'') which allows its participants (*i.e.*, broker-dealers and banks) and DRS Limited Participants (*i.e.*, transfer agents) to electronically change an investor's securities positions from street-name ownership to direct registration book-entry position and vice versa.[4] Specifically, Profile allows

[1] 15 U.S.C. 78s(b)(1).

[2] The exact text of the DTC's proposed rule change can be found at *http://www.dtcc.com/legal/rule_filings/dtc/2008.*

[3] The Commission has modified portions of the text of the summaries prepared by the DTC.

[4] Transfer agents acting as DRS Limited Participants must meet certain criteria established by DTC, which includes, among other things, that the transfer agent also be eligible to participate in DTC's Fast Automated Securities Transfer Program (''FAST''). For securities that are part of FAST, the DRS Limited Participants hold the securities registered in the name of DTC's nominee, Cede & Co., in the form of balance certificates. As additional securities are deposited or withdrawn (''deposit-by-transfer'' and ''withdrawal-by-transfer'', respectively) from DTC, the DRS Limited Participant adjusts the denomination of the balance

Continued

participants to electronically submit an investor's instruction that its share positions be moved from the investor's DRS account to the investor's broker-dealer's participant account at DTC. Profile also allows DRS Limited Participants to submit an investor's instruction for the movement of its share positions from the investor's broker-dealer's participant account at DTC to an account maintained by the DRS Limited Participant. Currently, DTC receives on average approximately 50,000 Profile instructions per month and that volume is expected to rise.

As the use of DRS continues to grow, attention has centered on reducing the number of rejected instructions submitted through Profile. In order to effectively transfer an investor's securities position using Profile, the participant must enter into Profile an instruction containing certain identifying criteria of the investor, such as share quantity and a taxpayer identification number (''TIN'') or Social Security number. If the submitted information does not match the information the DRS Limited Participant has on its file, the Profile instruction is rejected, which may result in a rejection fee assessed by the DRS Limited Participant. More importantly, the rejection can also result in delays in transferring the position, possibly causing financial harm to an investor.

Today, nearly 25% of all Profile instructions are rejected by the transfer agents. The two most common reasons for rejections are the Profile instruction not matching the share quantity and the Profile instruction not matching the investor's TIN or Social Security number on the transfer agent's records. The DRS Ad Hoc Committee, an industry committee established to address operational issues related to DRS, believes that by implementing certain system and processing improvements, the industry can potentially eliminate about 7,000 Profile rejections per month.

a. *Proposed Changes to Profile*

In an effort to decrease the number of rejections in Profile, members of the DRS Ad Hoc Committee have agreed that DTC should enhance the Profile functionality and that these changes should be required of all Profile users. Accordingly, DTC is proposing to make the following enhancements to Profile functionality:

Move All Instruction. Currently, Profile requires a participant to enter a specific share quantity or dollar value (in the case of debt) in their Profile instruction. Under the proposed rule change, the participant submitting an instruction in Profile would be allowed to select one of the following options: (1) Enter a specific share quantity or dollar value; (2) move all of the investor's whole shares [5] to the requesting participant's account at DTC; (3) move all of the investor's whole shares to the requesting participant's account at DTC, liquidate any fractional share positions remaining in the account at the transfer agent, and have the cash proceeds mailed directly to the investor; (4) move all of the investor's whole shares to the requesting participant's account at DTC, liquidate any fractional share positions remaining in the account at the transfer agent, have the cash proceeds mailed directly to the investor, and close the investor's DRS and Dividend Reinvestment Plan (''DRIP'') account.[6] By using the ''move-all'' functionality, participants can forgo referencing a specific share quantity in the Profile instruction, which DTC believes should eliminate a major cause of Profile rejections.[7]

Dual TIN or Social Security Numbers. Currently, participants are permitted to enter only one TIN or Social Security number in its Profile instruction. Under the proposed rule change, participants may elect to submit a Profile instruction with two TINs or Social Security numbers instead of one. The option to submit a Profile instruction with two TIN or Social Security numbers may be necessary, for example, where the investor's account is a joint account. For those Profile instructions with two TIN or Social Security Numbers, the DRS Limited Participant will only need to match one of the TIN or Social numbers on the Profile instruction to the DRS Limited Participant's records for the investor account.

The proposed rule change will require participants and DRS Limited Participants that process their DRS transactions through a direct electronic computer-to-computer link with DTC to make internal system enhancements to accommodate DTC's changes to Profile.[8] Specifically, internal systems will need to be enhanced so that they are able to accept DRS Profile instructions to ''move all'' shares from the investor's DRS Limited Participant account to the investor's participant's account at DTC. They will also need to be enhanced so that they are able to allow participants to submit Profile transactions with a second TIN/Social security number.

b. *Proposed Remuneration*

Members of the DRS Ad Hoc Committee have also agreed that participants will pay DRS Limited Participants two types of remuneration: (1) Reimbursement to compensate for the initial system development of the enhancements contemplated under the move-all proposal and (2) a transaction fee to pay for the on-going administration of the proposed new functions. Accordingly, DTC is proposing to require participants to pay for seventy-five percent of all system costs with a maximum payment of $200,000 per DRS Limited Participant for project plans submitted by DRS Limited Participants to DTC by September 1, 2008. For project plans that will be managed by a third party vendor, participants would be required to pay a remuneration based on the vendor's total project cost. DTC would act as a conduit to collect and distribute the remuneration from the participants to DRS Limited Participants.

Under the proposed rule change, DRS Limited Participants will be required to submit a project plan to DTC by September 1, 2008, and be ready to implement the ''move all'' Profile functionality by November 1, 2008, in order to be eligible to receive the system cost remuneration. DTC will make a one time payment to eligible DRS Limited Participants no later than 90 calendar days after the completion of the move all and dual TIN or Social security functionality going live. DTC proposes to collect a surcharge of $1.00 from participants, for no more than twenty-

certificate as appropriate, and electronically confirms these changes with DTC. As such, the program reduces the movement of physical certificates between DTC and DRS Limited Participants, reducing costs and risks to DTC, its participants, issuers and transfer agents associated with the creation, movement, and storing of certificates. For a description of DTC's current rules relating to FAST, see Securities Exchange Act Release Nos. 13342 (March 8, 1977) (File No. SR–DTC–76–3); 14997 (July 26, 1978) (File No. Sr–DTC–78–11); 21401 (October 16, 1984) (File No. SR DTC–84–8); 31941 (March 3, 1993) (SR–DTC–92–15); and 46956 (December 2, 2002) (File No. SR–DTC 2002–15).

In addition, DTC has filed a proposed rule change with the Commission relating to updating its FAST and DRS program requirements. *See* Securities Exchange Act Release No. 57362 (February 20, 2008) [File No. SR–DTC–2006–16].

[5] DTC's systems only process whole shares, not fractional shares and only allow whole shares to be held in participants' accounts at DTC.

[6] Some transfer agents maintain separate investor accounts for DRIP shares and DRS positions. The participant's instruction via Profile to close the account would require a DRS Limited Participant to close both the DRIP and the DRS account.

[7] Although DRS Limited Participants are able to enter Profile instructions to move DRS positions from a participant account at DTC to the investor's account on the books of the issuer, the proposed rule change will not permit the ''move all'' function in Profile to be available to the DRS Limited Participant at this time.

[8] It is anticipated that for those users that communicate Profile instructions through DTC via a dedicated terminal (PTS or PBS), they will only need to update their internal procedures and workflow.

four calendar months, for each Profile transaction submitted by a participant in order to offset the up-front remuneration made by DTC to DRS Limited Participants. DTC will eliminate the surcharge at the end of twenty-four calendar months or sooner if the total amount of up-front remuneration paid by DTC is collected before the twenty-four month period has expired.

DTC also proposed to charge participants $.75 per Profile transaction to offset the on-going cost to DRS Limited Participants of supporting the ''move all'' function. The transaction fee will be adjusted annually to reflect DRS Profile transactional volume changes. The proposed rule change will require DRS Limited Participants that wish to receive a transaction fee to submit their project plan by September 1, 2008. The DRS Limited Participants represented on the DRS Ad Hoc Committee have agreed that the monthly transactional fee will be no more than $25,000 per year per DRS Limited Participant. DTC will pay each eligible DRS Limited Participant with 2,000 or more Profile transactions monthly a set monthly amount of $2,080, or $24,960 annually. DTC will pay each eligible DRS Limited Participant with at least 200 transactions monthly but less than 2,000 transactions monthly a set monthly amount of $800, or $9,600 annually. DTC will not pay DRS Limited Participants with less than 200 transactions a month.

c. *Proposed DRS Limited Participant Eligibility Requirements*

DTC proposes to amend its DRS Limited Participant rules to require transfer agents to be able to process Profile instructions requesting the ''move all'' options and instructions including dual TIN or Social Security numbers. To maintain eligibility as a DRS Limited Participant, all current DRS Limited Participants must provide ''move all'' and dual TIN or Social Security number processing capability by no later than December 31, 2008.

2. Statutory Basis

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[9] and the rules and regulations thereunder because it improves efficiency and reduces risks associated with processing DRS transaction through Profile and improves the standards relating to the eligibility of transfer agents effecting DRS transactions.

[9] 15 U.S.C. 78q–1.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

DTC has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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–DTC–2008–07 in the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2008–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the DTC and on the DTC's Web site, *http://www.dtcc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2008–07 and should be submitted on or before September 2, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18421 Filed 8–8–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58298; File No. SR–NASDAQ–2008–055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change Regarding Fees for Orders Routed Via the Options Intermarket Linkage

I. Introduction

On June 18, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding fees for orders routed via the Options Intermarket Linkage (''Options Linkage''). The proposed rule change was published for comment in the

[10] 15 U.S.C. 78q–1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Federal Register on July 1, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend its fees related to orders routed to the NASDAQ Options Market (''NOM'') via the Options Linkage to establish a Linkage Fee Pilot Program that is effective through July 31, 2009 and to clarify the application of options transaction fees for trades executed through Options Linkage on the Exchange. Under this pilot, the fees applicable to Nasdaq members entering orders directly into NOM systems will apply to Nasdaq members and non-members that enter orders into other options exchanges that are then routed to Nasdaq via the Options Linkage and executed on NOM.

Under the Exchange's current Rule 7050(1), members are charged a fee of $0.45 per executed contract for orders entered and then executed on the NOM. Nasdaq's current rule does not differentiate between orders entered directly into the NOM via Nasdaq systems and orders received by Nasdaq via the Linkage. Since the launch of the NOM, Nasdaq has been assessing the same fee for all orders executed on behalf of members on its market regardless of whether such orders were entered directly into Nasdaq systems or via the Options Linkage.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(4) of the Act,[5] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the Exchange's current rule, the fee for members entering an order that executes on the NOM is $0.45 per executed contract. Nasdaq's current rule does not specifically provide that the same $0.45 options transaction fee is charged for trades routed to Nasdaq via the Options Linkage. The Exchange's proposal would establish a Linkage Fee Pilot Program, for a period ending July 31, 2009, that would charge $0.45 per executed contract to members or non-members entering orders via the Options Linkage that execute in NOM. Accordingly, the Commission believes that the Exchange's proposed rule change and Linkage Fee Pilot Program clearly sets forth the fees imposed on Linkage Orders.

Because the Exchange may have assessed the options transaction fee on Linkage Orders prior to this approval and, therefore, without authority, any parties assessed the options transaction fee for Linkage Orders prior to the approval of this proposed rule change may seek reimbursement. In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASDAQ–2008–055) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18427 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 58014 (June 24, 2008), 73 FR 37520.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58305; File No. SR–NASDAQ–2008–063]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Rules Governing the Requirements for Market Maker Quotations on the NASDAQ Options Market

August 5, 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 July 15, 2008, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Chapter VII, Section 6 of the Nasdaq rules governing the requirements for market maker quotations on the NASDAQ Options Market (''NOM''). The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.[4]

* * * * *

Chapter VII, Sec. 6 Market Maker Quotations

(a) Size Associated with Quotes. A Market Maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the Market Maker is willing to buy or sell. The best bid and best offer entered by a Market Maker must have a size of at least [ten (10)] *one (1)* contract[s].

(b)–(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 12, 2008, the Commission approved SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, proposals to create the NASDAQ Options Market or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com.*

NOM.[5] NOM has been performing above expectations since NASDAQ launched trading on March 31, 2008. There are multiple firms registered as market makers and over two dozen additional firms providing liquidity through NOM's system. NOM's market share of listed options continues to grow although NOM trades only a small percentage of all available options classes and series. Despite this early success, NASDAQ continues to monitor the market to identify instances where market efficiency can be enhanced.

NASDAQ believes that the efficiency of its market can be enhanced by permitting market makers to enter quotations for one or more contracts rather than requiring that they enter quotations for 10 or more contracts in series in which they are registered. NASDAQ projects that modifying the quotations requirements in this manner will encourage more options trading firms to register as market makers on NOM and to provide more liquidity to NOM participants. An overall increase in liquidity will benefit investors and serve the public interest.

The NOM Rules will continue to ensure that market makers actively quote. For example, NOM Rule Chapter VII, Section 6(d)(i) states that, on a daily basis, a market maker must maintain continuous two-sided quotations and participate in the pre-opening phase in 75% of the options series in which the market maker is registered. In addition, NOM provides functionality that allows registered market makers to automatically input a quotation on the side of the market that has been depleted. Moreover, pursuant to paragraph (d)(ii) of Section 6, Nasdaq Regulation may call upon a market maker registered in a particular series to maintain continuous bids or offers. Thus, Nasdaq may require a market maker to continuously quote if it is the only registered market maker in the series.

NASDAQ believes that this proposal is consistent with the Act and also with the Commission's well-settled position that the Act does not mandate any particular market model:

> The Commission agrees that the Act does not mandate a particular market model for national securities exchanges, and believes that many different types of market models could satisfy the requirements of the Act. The Commission does not believe that the Act requires an exchange to have market makers. Although Market Makers could be an important source of liquidity on NOM, they likely will not be the only source. In particular, the NOM System is designed to match buying and selling interest of all Participants on NOM. The Commission therefore believes that the NOM structure is consistent with the Act.[6]

The Commission went on to note that ''[i]n its release adopting Regulation ATS, the Commission rejected the suggestion that a guaranteed source of liquidity was a necessary component of an exchange'' and that the approved rules of the Archipelago Exchange did not include a market maker requirement.[7]

Nasdaq's proposal is also consistent with the current practice of the NYSE/Arca Exchange of permitting options market makers to enter quotations for one contract. The NYSE/Arca Options Market Maker Orientation Manual states that a market maker quotation must be entered for a minimum of one contract:

> All Market Makers must contribute to the maintenance of a fair and orderly market. Market Makers must honor the number of contracts entered into the system in all series of options classes within their Appointment. Any change to a quote (including reduction of volume) causes the quote to lose priority. **The minimum size is one contract.** Neither LMMs or MMs are required to quote on the Opening Auction. (emphasis added).[8]

Nasdaq proposes to adopt the same requirement and to make it transparent by including it in Nasdaq's official rule manual.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general and with Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes are consistent with the statute in that they are designed to facilitate transactions in options on the Nasdaq Options Market by encouraging participants to provide liquidity through Nasdaq's system. If the proposal succeeds in attracting additional liquidity providers and additional liquidity, the Nasdaq system will then match more buying and selling interest between and among all NOM participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance competition and is based upon the rules of another national securities exchange that trades standardized options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act,[11] and Rule 19b–4(f)(6) thereunder.[12] Nasdaq believes that the rule change should take effect immediately upon filing because it will effect a change that: (1) Does not significantly affect the public interest or the protection of investors, and (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days after the date of this filing. As such, the proposal is effective upon filing with the Commission. Nasdaq intends to make this rule proposal operative 30 days after the date of filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and 2007–080).

[6] *Id.* at 14527 (footnotes omitted).

[7] *Id.* at note 92.

[8] *http://www.nyse.com/pdfs/Options_MM_Orientation_Manual.pdf* at page 2.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2008–063 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–063 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18459 Filed 8–8–08; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11353 and #11354]

Texas Disaster #TX–00297

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1780–DR), dated 07/31/2008.

Incident: Hurricane Dolly.

Incident Period: 07/22/2008 and continuing.

DATES: *Effective Date:* 07/31/2008.

Physical Loan Application Deadline Date: 09/30/2008.

Economic Injury (Eidl) Loan Application Deadline Date: 05/01/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/31/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Cameron, Hidalgo, Willacy.

Contiguous Counties (Economic Injury Loans Only):

Texas: Brooks, Starr, Kenedy.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 113538 and for economic injury is 113540.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–18443 Filed 8–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

HUBZone Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of methodology for measuring the economic impact of the HUBZone Program.

SUMMARY: In June 2008, the Government Accountability Office (GAO) issued its findings on the U.S. Small Business Administration (SBA) Historically Underutilized Business Zone (HUBZone) Program. One of GAO's findings is that the SBA does not assess the Program's economic impact. The GAO noted the importance of this given that the HUBZone Program is primarily defined by economic factors (household income, unemployment rate, and poverty rate).

On June 6, 2008, the SBA responded to GAO's findings, and provided several steps to address them. One of these steps is to develop a methodology for assessing the Program's economic impact.

This paper outlines the anticipated methodology for this assessment. The paper will provide a brief description of the different methodological options currently available for undertaking an impact assessment. It will then provide a basic description of the HUBZone Program. Finally, it will detail the specific methodology chosen for measuring the Program's economic impact.

The complexity of assessing the Program's economic impact lies in that there are multiple government agencies using three relevant procurement mechanisms, and five classes of HUBZones. In addition, the required data for this assessment will be derived from four different databases. This multiple database feature, as well as other documented data issues of the HUBZone Program, increases the difficulty of correctly identifying the assessment's relevant data elements. This methodology assumes that these data issues will be addressed.

This methodology will trace Federal contract dollars as they flow to the

various HUBZone areas. It will then estimate the impact of these contract dollars on the HUBZone areas' employment and household income. To isolate the impact of the HUBZone Program, the methodology differentiates Federal contract dollar-flows in three ways: (1) Via the HUBZone Direct Mechanism, where Federal contract dollar-flows are directly attributable to the HUBZone Program; (2) Via the Non-HUBZone SBA Contract Mechanisms, where Federal contract dollar-flows are directly attributable to SBA programs, but exclude the HUBZone Program; (3) Via the Non-SBA Federal Contract Mechanisms, where Federal contract dollar-flows are not associated with any SBA program.

This differentiation addresses GAO's recommendation to develop measures that take into account factors such as (1) the economic characteristics of the HUBZone areas and (2) Federal contracts being counted under multiple socioeconomic subcategories.

DATES: Comments must be received on or before September 10, 2008.

ADDRESSES: You may submit comments by Mail, Hand Delivery/Courier: Giuseppe Gramigna, Office of Policy and Strategic Planning, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Giuseppe Gramigna, Office of Policy and Strategic Planning, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 401–3227; *giuseppe.gramigna@sba.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

In June 2008, the GAO issued its findings on the SBA HUBZone Program.[1] One of GAO's findings is that the SBA does not assess the economic impact of the HUBZone Program. The GAO noted the importance of this given that the HUBZone Program is primarily defined by economic factors (household income, unemployment rate, and poverty rate).

On June 6, 2008, SBA responded to GAO's findings, and detailed several reforms to address them. One of these steps is to develop a methodology for assessing the Program's economic impact. To a great extent, this methodology will be restricted to measuring the economic impact of the HUBZone Program, and not judging the significance of the impact. The primary reason for this restriction is that Congress only provided a contracting goal for the HUBZone Program: That as of fiscal year 2003, 3 percent of all Federal prime contract dollars should go to small firms located in HUBZone areas.[2] However, this goal provides no guidance on how to assess the significance of the economic impact of this 3 percent Federal contracting goal. Lacking this guidance, the assessment can only provide a measurement of the Program's economic impact.

This paper outlines the anticipated methodology for this assessment. The paper will provide a brief description of the different methodological options currently available for undertaking an impact assessment. It will then provide a basic description of the HUBZone Program. Finally, it will detail the specific methodology chosen for measuring the Program's economic impact.

This methodology will trace Federal contract dollars as they flow to the various HUBZone areas. It will then estimate the impact of these contract dollars on the HUBZone areas' employment and household income. To isolate the impact of the HUBZone Program, the methodology differentiates Federal contract dollar flows in three ways: (1) Via the HUBZone Direct Mechanism, where Federal contract dollar flows are directly attributable to the HUBZone Program. (2) Via the Non-HUBZone SBA Contract Mechanisms, where Federal contract dollar flows are directly attributable to SBA Programs, but excluding the HUBZone Program. (3) Via the Non-SBA Federal Contract Mechanisms, where Federal contract dollar flows are not associated with any SBA programs.

This differentiation addresses GAO's recommendation to develop measures that take into account factors such as (1) the economic characteristics of the HUBZone areas and (2) Federal contracts being counted under multiple socioeconomic subcategories.

The complexity of assessing the economic impact of the HUBZone Program lies in that there are multiple government agencies, each using three relevant procurement mechanisms, and five classes of HUBZones. In addition, the required data for this assessment will be derived from four different databases. This multiple database feature of the HUBZone Program increases the difficulty of correctly identifying the relevant data elements.

Finally, the GAO report as well as an SBA Advocacy report found additional data identification issues.[3] Both reports indicate that the various databases provide inconsistent data on HUBZone firms and HUBZone areas. These data inconsistencies can lead to misidentification of the contract dollar-flows to HUBZone areas, and can thus introduce errors in the assessment.

This methodology assumes that data inconsistencies will be addressed. The assessment will need to account for any inconsistencies remaining in the data. The criteria for this adjustment process have not yet been developed, as they will most likely be derived from a data analysis of the HUBZone Program.

Currently Available Impact Assessment Models

There are several theoretical models for assessing the economic impact of a particular Federal government expenditures program at the national level. However, when it comes to assessing the economic impact of Federal expenditures on a specific geographic region—a state or a county for example—the options quickly narrow-down to a few variations of a singular theoretical approach: The Leontief Input-Output Model.[4] The SBA found that the specific aspects of the HUBZone Program allow for a successful implementation of this methodological approach. Specifically, the HUBZone Program eligibility is largely defined by the economic concepts of employment and income.

[1] U.S. GAO. June 2008. *Additional Actions Are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results.* Washington. Draft GAO–08–643.

[2] ''The Government-wide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter.'' 15 U.S.C. 644(g)(1).

[3] Henry Beale, (May 2008), The *HUBZone Program,* U.S. SBA Advocacy, Washington, DC.

[4] While the proliferation of methodologies for impact studies has grown over the years, the difference among them is primarily based on terminology and focus. Indeed, most methodologies for impact study can be traced to two theoretical economic approaches. The first is the General Equilibrium approach, and the other is the Static Input-Output Model. These two theoretical approaches have their common origins in the 1930's work of R. F. Kahn and John Maynard Keynes, and the 1940's–1950's work of Wassily W. Leontief. For more details see, R. F. Kahn. (June 1931). The Relation of Home Investment to Employment. *The Economic Journal, Vol. 41.* pp. 173–198. John Maynard Keynes. (1936). *The General Theory of Employment, Interest and Money,* Macmillan Cambridge University Press, for Royal Economic Society, Wassily W. Leontief. (1951). *The Structure of American Economy 1919–1939.* 2d ed. Oxford University Press, Fair Lawn, NJ. Ultimately these works trace their origins to the 16th century French economist Françis Quesnay. See *Le Tableau Economique, 1758.*

Fortunately, nearly all commercially available Input-Output models provide employment and income data at very detailed geographic and industry levels.

The SBA identified three sources that provide software and data for the practical application of this approach. A cursory analysis of these models indicates that, because they use the same basic methodology and data, the differences among them are not significant enough to materially alter the outcome of a particular assessment. Hence, the SBA will base the final choice among these applications on cost and ease of usability.

These models include RIMS II (developed by the Bureau of Economic Analysis), IMPLAN (developed by the Minnesota Implan Group, MIG Inc, in Minnesota), and REMI (developed by Regional Economic Models, Inc. in Amherst, Massachusetts).

A Basic Description of the HUBZone Program

The HUBZone Act of 1997 provides for a new Federal program designed to stimulate job creation and capital investment in distressed urban, rural and Native American areas. Through this Act, Congress provided a contracting goal for the HUBZone Program: That as of fiscal year 2003, 3 percent of all Federal prime contract dollars should go to small firms located in HUBZone areas.

HUBZone Areas

Currently, there are five different definitions of HUBZone areas: [5]

1. *Qualified Census Tract (QCT):* The Internal Revenue Service and the U.S. Department of Housing and Urban Development (HUD) define a Qualified Census Tract as having either 50 percent or more of their households with income below 60 percent of the median gross income, or have a poverty rate of at least 25 percent. There is a maximum cap specifying that the population of all of the census tracts that meet one or both of these criteria cannot exceed 20 percent of the area population; [6]

2. *Difficult Development Area (DDA):* The definition of Difficult Development Area is similar to Qualified Census Tract in that it is based on an Internal Revenue Service provision for the Low Income Housing Tax Credit Program developed in conjunction with HUD. A characteristic of a DDA is that the locale has high construction, land and utility costs relative to the area median income; [7]

3. *Qualified County:* The definition for qualified county is any county that, based on the most recent data available from the U.S. Census Bureau, is not located in a metropolitan statistical area, and in which the median household income is less than 80 percent of the median household income for the entire non-metropolitan area of its respective state. Alternatively, a qualified county is any non-metropolitan county that, based on the most recent data available from the Bureau of Labor Statistics (BLS), has an unemployment rate that is not less than 140 percent of the state average unemployment rate or the national average unemployment rate; [8]

4. *Qualified Indian Reservation:* The definitions for qualified Indian reservations, which include lands covered by the phrase ''Indian Country,'' are those established and used by the Bureau of Indian Affairs. A more precise listing of properties included in this classification, besides reservations, is Indian trust lands (on and off the reservation), Indian dependant lands, and Indian service areas. In the state of Oklahoma, the HUBZone Program uses a determination arrived at by the Internal Revenue Service as the property is legally classified as a ''former Indian reservations in Oklahoma''; [9]

5. Base Realignment and Closure (BRAC): A military base closed under the Defense Base Realignment and Closure Act of 1990 (BRAC). Congress determined that former military bases closed because of BRAC qualify for HUBZone status for a five-year period from the date of formal closure. For those locations closed as of the date the legislation was signed into law, the five-year period began on the date the law became effective, Dec. 8, 2004.[10]

The selection criteria for each HUBZone classification varies somewhat, to account for the different economic characteristic of the various HUBZone classes. However, for this specific methodological purpose, it is sufficient to state that six elements go into the criteria:

1. Household income level;
2. Unemployment rate;
3. Poverty rate;
4. BRAC;
5. DDA;
6. Classification as ''Indian Country''.

HUBZone Firms

The SBA HUBZone Program qualifies and periodically recertifies firms wishing to obtain or retain HUBZone status. The qualifying criteria for a HUBZone firm are based on having a specific level of operational activities within the geographic area of a HUBZone. Specifically, the firm must have its principal office located in a HUBZone Area, and at least 35% of its labor force must reside within a HUBZone Area.

Federal Contract Mechanisms Federal Contracting Officers have quite a few mechanisms to channel funds to a HUBZone Area. For example, some Federal contracting mechanisms are based on socioeconomic status such as service disabled veteran, while others are simply based on full and open competition. Some of these mechanisms are related to the HUBZone Program and some are not. Understanding and tracing the dollar flows of these specific mechanisms will be crucial for assessing the economic impact of the HUBZone Program. To effectively trace these contracting dollars, the model differentiates among the following contracting mechanisms:

1. *HUBZone Direct Mechanism:* Federal contract mechanisms based on HUBZone Program mechanisms (i.e., HUBZone set-aside, HUBZone sole source, and HUBZone price preference in a full and open competition); [11]

[5] Please note that the original HUBZone designations were based upon the 1990 census. As a result of the 2000 census and OMB change in definition of metropolitan areas some HUBZone areas lost their eligibility. Consequently, Congress passed legislation to restore the eligibility of these areas, now referred to as Redesignated Areas.

[6] The definition for Qualified Census Tract is based on the Internal Revenue Service provision for the Low Income Housing Tax Credit Program that is developed in conjunction with the U.S. Department of Housing and Urban Development (HUD). The HUD Secretary designates Qualified Census Tracts by public notice in the **Federal Register**. Public Law 105–135, the HUBZone Act of 1997, was signed on Dec. 2, 1997 and is the source for using this designation.

[7] NOTE: By virtue of legislation, signed into law on August 10, 2005, the application of the DDA status for HUBZone consideration only applies to non-metropolitan counties in Alaska, Hawaii, and the U.S. territories and possessions, but not to the 48 contiguous states. The Secretary of HUD designates Difficult Development Areas by public notice in the **Federal Register**. Public Law 109–59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act of the Department of Transportation Reauthorization for 2005, was signed on Aug. 10, 2005, and is the source for using this designation.

[8] Public Law 105–135, the HUBZone Act of 1997, was signed on Dec. 2, 1997, and is the source for using this designation.

[9] Both Public Law 105–135, the HUBZone Act of 1997, signed on Dec. 2, 1997, and Public Law 106–554, the HUBZone Act of 2000, signed on Dec. 12, 2000, are the sources for using this designation.

[10] Public Law 108–447, the HUBZone Act of 2004, was signed on Dec. 8, 2004 and is the source for using this designation.

[11] Both the GAO and the Advocacy report indicate that there are a certain number of HUBZone contracts that have more than one preference mechanism designation. Indeed, the legislation defining these mechanisms is rather complex. The current model does not account for this additional contract mechanism. Addressing for the existence of multiple contract mechanisms is largely data driven. If the data indicate that the

2. *Non-HUBZone SBA Contract Mechanisms:* SBA contract mechanisms solely based on Non-HUBZone mechanisms (e.g., small business set-aside, service disabled veteran-owned small business set aside, 8(a) sole source award, 8(a) set aside);

3. *Non-SBA Federal Contract Mechanisms:* Competitive Federal procurement mechanisms based on full and open competition, and other contracting mechanisms available to small and 'other than small' firms.

These differentiations allow for the incremental measurement of all Federal contract dollars flowing to HUBZones via the various kinds of Federal procurement mechanisms. Specifically:

- Mechanism 1 measures the dollar flow attributable the HUBZone Program;
- Mechanism 2 measures the dollar flow attributable to Non-HUBZone SBA programs on the HUBZone areas;
- Mechanism 3 measures the dollar flow attributable to Non-SBA Federal procurement contracts to HUBZone areas;
- The summation of mechanisms 1, and 2, allows for the measurement of all the SBA's procurement contracts towards HUBZone areas;
- The summation of mechanisms 1 through 3 allows for the measurement of all Federal contracts toward HUBZone areas.

Statistical Characteristics of the Economic Impact Assessment Model

It is commonly the case that the final analysis will include aspects not anticipated in the original methodology outline. This is a natural outcome of going through the entire exercise, and being able to identify subtleties not perceivable from the onset of the study. Hence, it may very well be the case that the actual assessment may include statistical and data elements not mentioned in this methodology. However, we anticipate using the following statistical and data elements to provide a quantitative description of the HUBZone Program.[12]

1. The five HUBZone areas and their HUBZone participation (i.e., the number of HUBZone Business, Vendors, and Contract Dollars);

2. The flow of contract dollars via the various HUBZone mechanisms over time;

3. Industry concentration of HUBZone contracts (i.e., the number and dollar value of HUBZone contracts by NAICS industry);

4. HUBZone participation by state (i.e., the number of HUBZone Businesses, Contractors, and Contract Dollars);

5. Employment Level;

6. Unemployment Rate;

7. Median Household Income.

In addition, we anticipate utilizing the following statistical and data elements for each HUBZone Area:

A. The number of sub-areas (mostly counties) in the HUBZone Area;

B. The number of HUBZone Firms in the HUBZone Area;

C. The number of HUBZone Contractors in the HUBZone Area;

D. The number of HUBZone Contracts flowing into the HUBZone Area;

E. HUBZone Contract Dollars flowing into HUBZone Area;

F. Population in the HUBZone Area.

- Ratio 1: The number of HUBZone Firms divided by HUBZone Area
- Ratio 2: The number of HUBZone Firms divided by HUBZone Area Population
- Ratio 3: The number of HUBZone Contractors divided by HUBZone Area
- Ratio 4: The number of HUBZone Contractors divided by HUBZone Area Population
- Ratio 5: The number of HUBZone Contracts divided by HUBZone Area
- Ratio 6: The number of HUBZone Contracts divided by HUBZone Area Population
- Ratio 7: HUBZone Contract Dollars divided by HUBZone Area
- Ratio 8: HUBZone Contract Dollars divided by HUBZone Area Population.

Data elements B through E measure the level of participation of a specific HUBZone Area. Ratios 1, 3, 5, and 7 measure the comparative rate of participation of a particular HUBZone Area. In addition, the population ratios (ratios 2, 4, 6, and 8) measure the comparative rate of participation on a per capita basis.

These statistics and data elements will provide the basis for measuring the absolute level and the comparative rate of participation in each HUBZone Area. For example, they will provide contract data (i.e., the number of contracts, the dollar value of these contracts, and the types of mechanisms used to obtain these contracts) for a specific HUBZone Area. In addition, by dividing these contract data, say by population in a specific HUBZone Area, they provide a comparative measure of the importance of these contracts with respect to population.

Other statistical analysis of the above data should provide additional quantitative understanding of the HUBZone Program. For example, it may be useful to derive some commonly used central tendency measures (i.e., mean, median, mode.) as well as some commonly used distribution measures (e.g., quartile, decile, standard deviation, etc.).

Estimating the Incremental and Total Economic Impact of the HUBZone Program

Having provided a sufficient statistical description of the HUBZone Program, the model will then estimate the economic impact of the contract dollar flows attributable to the three contracting mechanisms. Specifically, the model will provide the following estimates:

1. The economic impact directly attributable to the HUBZone Program;

2. The economic impact of the Non-HUBZone SBA programs on HUBZone areas;

3. The economic impact of other related Federal procurement programs affecting HUBZone areas.

Economic impact will be measured by the estimated growth in median household income and employment (or a reduction in unemployment) in a specific HUBZone Area.

The model will use a two-step process to arrive at these estimated growth rates. First it will apply a specific multiplier to the contract dollars flowing to a specific HUBZone Area via the three contract mechanisms.[13] In a second step, the model will aggregate the results to the appropriate analytical level to measure the economic impact of the various dollar flows.[14]

In order to accomplish these two steps, the model will employ the following types of equation:

occurrences of multiple mechanisms designation are insignificant, then it is reasonable to included them in the HUBZone Direct Mechanism. However, if there are significant occurrences of multiple mechanisms contracts, then the model will expand to explicitly include this additional contract mechanism, and will thus have four contract mechanisms.

[12] This section draws on the work of Henry Beale, (May 2008), *The HUBZone Program,* U.S. SBA Advocacy, Washington, DC.

[13] These multipliers will be provided by the specific Input-Output software chosen.

[14] We expect that the ''appropriate analytical level'' will capture the economic impact at the HUBZone Area category. However, it may also prove informative to analyze the HUBZone Program economic impact at a more granular level. For example, it may be useful to analyze the data at the individual HUBZone Area level. This granularity, for example, might shed light on how and why some HUBZone areas are more successful than others at attracting Federal contracts. Indeed, the Advocacy report does this. See SBA Advocacy (2000). Op. Cit. It may also be revealing to analyze the data at the firm type level to see what differentiates successful HUBZone contractors from other HUBZone firms. Whether it is feasible to analyze the data at this level of granularity will largely be a question of resources and privacy issues.

The Employment Impact Equations

1. HUBZone Direct Employment Impact = f (dollar flow to a HUBZone Area via the HUBZone Direct Mechanism multiplied by Employment Multiplier) [15]

2. Non-HUBZone SBA Employment Impact = f (dollar flow to a HUBZone Area via Other SBA Mechanisms multiplied by the Employment Multiplier)

3. Non-SBA Federal Employment Impact = f (dollar flow to a HUBZone Area via Non-SBA Federal contract Mechanisms multiplied by the Employment Multiplier)

The Income Impact Equations

4. HUBZone Direct Income Impact = f (dollar flow to a HUBZone Area via the HUBZone Direct Mechanism multiplied by the Income Multiplier)

5. Non-HUBZone SBA Income Impact = f (dollar flow to a HUBZone Area via Other SBA Mechanisms multiplied by the Income Multiplier)

6. Non-SBA Federal Income Impact = f (dollar flow to a HUBZone Area via Non-SBA federal contract Mechanisms multiplied by the Income Multiplier)

Equations 1 and 4 measure the economic impact directly attributable to the HUBZone Program. Equations 2 and 5 measure the economic impact attributable to the Non-HUBZone related SBA Federal procurement programs. Finally, equations 3 and 6 measure the Non-HUBZone and Non-SBA Federal procurement program on a HUBZone Area.

Hence, the first set of equations (1 and 4) measure the economic impact of the HUBZone Program. The second set of equation (2 and 5) measure the economic impact of the Non-HUBZone related SBA procurement programs. The third set of equations (3 and 6) measure the economic impact of the Non-HUBZone and Non SBA Federal procurement program on a specific HUBZone Area. Summing the result of equations 1 through 6 will provide for a measurement of the entire Federal procurement program on a specific HUBZone Area.

A comparison of these set of equations can place the economic impact of the HUBZone Program into perspective. For example, comparing the results of the first set of equations (1 and 4) to the results of the second set of equations (2 and 5) will compare the economic impact of HUBZone Program to the economic impact of the Non-HUBZone SBA programs. Likewise, comparing the results of the first set of equations (1 and 4) to the results of the third set of equations (3 and 6) will compare the economic impact of HUBZone Program to the economic impact of the Non-SBA Federal procurement programs.

Databases

Based on our understanding, there are four databases necessary for the resolution of the model. Following is a basic description of each of these databases:

HUBZone Certification Tracking System (HCTS)

This database is maintained by the SBA HUBZone Program. The data contained in this database is generated from the application, recertification and program examination processes of the HUBZone Program. The following relevant data elements can be found in this database:

- Firm Identification Elements (e.g., name, address, SBA Customer Number, HUBZone Application Number);
- Firm Operational Elements (e.g., Employment, Revenue Size).

Central Contractor Registration (CCR)

The Central Contractor Registration (CCR) is the primary registrant procurement database for the U.S. Federal Government. CCR collects, validates, stores and disseminates data in support of agency acquisition missions. It is federally mandated that anyone who wishes to do business with the Federal government under a FAR-based contract must be registered in CCR before being awarded the contract.

The Federal Procurement Data System (FPDS)

The Federal Procurement Data System-Next Generation (FPDS–NG) is maintained by the General Services Administration under the direction of the Office of Management and Budget. This database contains key data on all Federal appropriated procurement actions. The following relevant data elements can be found in this database:

- Contract Identification (e.g., contract value, and selection mechanism)
- Firm Identification (e.g., DUNS Number, socioeconomic status [HUBZone, 8a, Open Competition])

Census 2000

While the HUBZone Program was established by congress in 1997, it became operational in 1999. Hence for simplicity purposes, we anticipate using the 2000 Census data.[16] The 2000 Census data provides the following data elements:

- Population;
- Labor Force;
- Unemployment Rate;
- Poverty Rate;
- Household Income.

Defining the Data Elements

So far we have identified the following data elements:

1. Contracting Federal Agencies;
2. Contracting Mechanisms;
3. HUBZone Areas;
4. HUBZone Firms;
5. HUBZone Contractors.

The next data element to be defined is ''Contract Value''. To a certain extent our choice is limited by the availability of data found in FPDS. This database only records obligated funds. However, we have no information at which point in time these obligated funds were actually expended. Faced with this restriction, we assume that all the funds are spent in the year that they are obligated.[17]

Given the above restrictions, we deduce the final data element required by our model:

6. Contract Value is defined as prime, obligated dollars via any one of the three contract mechanisms.

The final data elements to be specified in this model are the type of multipliers used for estimating incremental and total economic impact. As indicated in our basic description of the I–O Model, this decision is primarily based on the available data elements. Hence, given the above-described data elements, we anticipate using the final demand multiplier for output, income, and employment. Hence, we have the following additional data elements:

7. Final Demand Output Multiplier;
8. Final Demand Employment Multiplier;
9. Final Demand Income Multiplier.

A common aspect of all I–O models is that they provide final demand multipliers for many industries. For example, the RIMS II model provides final demand multipliers for 386 industries. Hence, we expect that it will be necessary to reduce the number of industry-specific multipliers. There are several options for narrowing this choice. For example, one could take a weighted average of the relevant multipliers, or one could simply choose a representative sample (say the largest

[15] All the multipliers in this analysis are Final Demand multipliers.

[16] The Census decennial population survey is the only source that provides socioeconomic data at the level required for this impact study.

[17] The extent that expenditures timing differ from allocation timing will increase model's error rate.

two or three) multipliers. This decision will be based on weighing the effort versus the additional accuracy gained from employing additional multipliers.

Another common aspect of most I–O models is that they provide final demand multipliers at the county level. Given that there are several thousand counties, we expect to reduce the regional specification of our multipliers. Again we will weigh effort versus accuracy in making this choice.

Authority: 13 CFR part 126.

Fay E. Ott,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. E8–18441 Filed 8–8–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6312]

30-Day Notice of Proposed Information Collection: DS–157, Supplemental Nonimmigrant Visa Form, OMB Control Number 1405–0134

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Supplemental Nonimmigrant Visa Form
- *OMB Control Number:* 1405–0134
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO)
- *Form Number:* DS–157
- *Respondents:* Nonimmigrant visa applicants legally required to provide additional security and background information.
- *Estimated Number of Respondents:* 4,000,000
- *Estimated Number of Responses:* 4,000,000
- *Average Hours per Response:* 1 hour
- *Total Estimated Burden:* 4,000,000
- *Frequency:* Once per respondent
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from August 11, 2008.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from David Serna of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2874.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Applicants will use this form to apply for a nonimmigrant visa to enter the United States. U.S. embassies and consulates will use the data provided in conjunction with the DS–157 to help determine whether aliens are eligible to receive nonimmigrant visas.

Methodology: Applicants may fill out the DS–157 online or print the page and fill it out by hand, and submit it in person at the time of interview.

Dated: July 31, 2008.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E8–18475 Filed 8–8–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6313]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art & Empire: Treasures From Assyria in the British Museum''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition ''Art & Empire: Treasures from Assyria in the British Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, MA, from on or about September 21, 2008, until on or about January 4, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 4, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–18476 Filed 8–8–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0224]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Greyhound Lines, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from Greyhound Lines, Inc. (Greyhound) regarding the placement of video event recorders at the top of the windshields on its buses. Greyhound wants to mount the recorders in an area of the windshield that is lower than what is currently permitted by the Agency's regulations in order to obtain the most effective view of the driver, passengers or outside area to maximize the ability to improve driver safety and understand the root causes of collisions. Greyhound would use the video event recorders to increase safety through (1) Identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior; and (3) enhanced collision review and analysis. Greyhound believes this mounting position would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: Comments must be received on or before September 10, 2008.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2008–0224 by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- Hand Delivery: Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Greyhound's Application for Exemption

On March 19, 2008, Greyhound applied for an exemption from 49 CFR 393.60(e)(1) to allow it to install video event recorders on some or all its bus fleet—which totals approximately 1,650 buses. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (devices) must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

Greyhound states that over the last several years, the structural and aesthetic design of buses has changed considerably to include larger windshields that encompass a larger percentage of the front area of a motor coach and that extend well beyond the driver's useable sight line. As a result, manufacturers have voluntarily installed larger windshield wipers on these windshields that increase the swept area beyond that which is minimally required by Federal Motor Vehicle Safety Standard (FMVSS) No. 104, ''Windshield Wiping and Washing Systems.'' FMVSS No. 104 establishes the requirements applicable to vehicle

and equipment manufacturers for windshield wiper system coverage for passenger cars, multi-purpose passenger vehicles, trucks and buses.

Greyhound states that video event recorders, for optimal effectiveness, are mounted on the vehicle windshield on the interior of the vehicle in a position that enables the video-capture of what is happening in front of the vehicle as well as an internal video-capture of the driver and passengers. The view of what is happening in front of the vehicle requires that the forward lens of the recorder be in the swept area of the windshield for a clear view in inclement weather. Greyhound states:

''Section 393.60(e)(1) was designed to avoid placement of devices on the windshield that would obstruct a driver's useful view of the roadway. However, because of the increase of the size of motorcoach windows and the corresponding increase in the area swept by the windshield wipers, video event recorders now must be mounted so high on the window as to limit the view of drivers, passengers, and collision events. Thus, the level of safety that can be produced by use of video event recorders is limited by the current regulation. By comparison, the proposed alternative will enable Greyhound to lower the placement of the video event recorders to a level, which will maximize the external and internal views of the recorders while still having them mounted high enough so as not to limit the field of vision of the driver.''

Greyhound notes in its exemption application that the Commercial Vehicle Safety Alliance (CVSA) submitted a petition for rulemaking to FMCSA on October 18, 2007, to amend 49 CFR 393.60(e). The CVSA petition requests that the FMCSRs be amended to permit video event recorders and similar devices that require a clear forward facing visual field to be mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, provided that they are located outside the driver's sight lines to the road and highway signs and signals. In its exemption application, Greyhound proposes to comply with the language proposed by the CVSA petition during the period of the exemption, if granted. A copy of the CVSA petition has been placed in the docket referenced at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on Greyhound's application for an exemption from 49 CFR 393.116(a)(3). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: August 1, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–18495 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the fifteenth meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The fifteenth meeting of the Financial Literacy and Education Commission will be held on Tuesday, September 16, 2008, beginning at 10 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To be cleared for admittance to the Treasury building, attendees must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship. This information can be provided in an e-mail to the Treasury Department at *FLECrsvp@do.treas.gov* or by a telephone voice message at (202) 622–1783 (not a toll-free number) no later than 12 noon (EDT) Thursday, September 11, 2008. For admittance to the Treasury building on the day of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth.

FOR FURTHER INFORMATION CONTACT: For additional information, contact William F. Sullivan by e-mail at *william.sullivan@do.treas.gov* or by telephone at (202) 622–4826 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at *http://www.treas.gov/financialeducation.*

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the ''FACT Act'') (Pub. L. 108–159), established the Financial Literacy and Education Commission (the ''Commission'') to improve the financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the heads of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months. The FACT Act was enacted on December 4, 2003.

The fifteenth meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The room will accommodate 80 members of the public. Seating is available on a first-come, first-seated basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and special guest presenters.

Dated: August 4, 2008.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–18414 Filed 8–8–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of fourteen additional entities and seventeen additional individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Secretary of the Treasury of the fourteen entities and seventeen individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property subject to U.S. jurisdiction which are owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property subject to U.S. jurisdiction of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, Secretary of State and the Secretary of Homeland Security as: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On August 5, 2008, OFAC designated an additional fourteen entities and seventeen individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees follows:

Entities

1. GRUPO INDUSTRIAL GAXIOLA HERMANOS S.A. DE C.V. (f.k.a. MADYVA; a.k.a. GRUPO INDUSTRIAL GAXIOLA); Calle del Oro, Esq. Vinedo, Colonia Parque Industrial, Hermosillo, Sonora 83299, Mexico; Luis Encinas y Alberto Truqui, Hermosillo, Sonora, Mexico; Guadalajara, Jalisco, Mexico; R.F.C. GIG910522BR8 (Mexico); (ENTITY) [SDNTK]
2. AGRICOLA GAXIOLA S.A. DE C.V., Calle Colonizadores No. exterior 83 y No.interior D, Esq. Quintas de las Aves, Col. Las Quintas, Hermosillo, Sonora 83240, Mexico; R.F.C. AGA9607119X3 (Mexico); (ENTITY) [SDNTK]
3. COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Calle Rio Piaxtla No. exterior 45, Col. Guadalupe, Culiacan, Sinaloa 80220, Mexico; R.F.C. MRC900823R6A (Mexico); (ENTITY) [SDNTK]
4. COPA DE PLATA S.A. DE C.V., Calle Fco I Madero Ote, No. exterior 183, Colonia Centro, Culiacan, Sinaloa 80000, Mexico; Blvd. Francisco I. Madero Numero 183 al Oriente, Colonia Centro, Culiacan, Sinaloa 80000, Mexico; R.F.C. CPL9103222F5 (Mexico) issued: 22 Mar 1991; (ENTITY) [SDNTK]
5. TEMPLE DEL PITIC S.A. DE C.V. (f.k.a. CORPORATIVO GAXIOLA HERMANOS S.A. DE C.V.); Blvd. Francisco Eusebio Kino 177–7, Col. 5 de Mayo, Hermosillo, Sonora 83010, Mexico; Avenida Angel Garcia Aburto #62, Colonia Loma Linda, Hermosillo, Sonora, Mexico; Colonizadores No. 83D, Colonia Las Quintas, Esq. Quintas de las Aves, Hermosillo, Sonora 83240, Mexico; Blvd Rodriguez 108, Col Centro, Hermosillo, Sonora, Mexico; R.F.C. CGH960503DL9 (Mexico); d.b.a. ''ANARQUIA PAINTBALL''; (ENTITY) [SDNTK]
6. DISTRIBUIDORA GRAN AUTO S.A. DE C.V., Hermosillo, Sonora, Mexico; R.F.C. DGA960531NUA (Mexico); (ENTITY) [SDNTK]
7. INMOBILIARIA GAXIOLA HERMANOS S.A. DE C.V. (f.k.a. DISTRIBUIDORA DE MUEBLES GAXIOLA HERMANOS; a.k.a. INMOBILIARIA GAXIOLA); Blvd. Francisco Eusebio km. 177–7, Col. 5 de Mayo, Hermosillo, Sonora 83010, Mexico; Blvd. L Encinas numero 581-A, Esquina Truqui, Colonia Pimentel, Hermosillo, Sonora, Mexico; Michoacan 404 Inter. 11, Colonia Cerrada Paraiso, Hermosillo, Sonora 83170, Mexico; Michoacan 404 Inter. 11, Colonia Cerrada Paraiso, Hermosillo, Sonora 83188, Mexico; Blvd. Jose Maria Morelos s/n y Ave 13 Col Colinas del Bachoco, Hermosillo, Sonora 83000, Mexico; Guadalajara, Jalisco, Mexico; R.F.C. IGH910522UM3 (Mexico); R.F.C. DMG910522611 (Mexico); (ENTITY) [SDNTK]
8. MOLDURAS DEL NOROESTE S.A. DE C.V., Blvd. Francisco Eusebio Kino 177–7, Col. 5 de Mayo, Hermosillo, Sonora 83010, Mexico; R.F.C. MNO960403HJ0 (Mexico); (ENTITY) [SDNTK]
9. MINERA LA CASTELLANA Y ANEXAS S.A. DE C.V., Culiacan, Sinaloa, Mexico; R.F.C. MCA9011192R3 (Mexico); (ENTITY) [SDNTK]
10. MINERA RIO PRESIDIO S.A. DE C.V., Culiacan, Sinaloa, Mexico; (ENTITY) [SDNTK]
11. DISTRIBUIDORA DE HERMOSILLO GAXIOLA HERMANOS S.A. DE C.V. (a.k.a. MADYVA); Fco. Eusebio Kino 177–7, Col. 5 de Mayo, Hermosillo, Sonora 83010, Mexico; Blvd. Luis Encinas 581, Esquina Alberto Truqui, Colonia Pimentel, Hermosillo, Sonora, Mexico; Guadalajara, Jalisco, Mexico; R.F.C. DHG900717NV3 (Mexico); (ENTITY) [SDNTK]
12. INMUEBLES SIERRA VISTA S.A. DE C.V., Hermosillo, Sonora, Mexico; (ENTITY) [SDNTK]
13. FLETES Y TRANSPORTES GAXGAR S.A. DE C.V., Boulevard Luis Encinas No 581–B Esquina Alberto Truqui, Colonia Pimentel, Hermosillo, Sonora, Mexico; Guadalajara, Jalisco, Mexico; Alberto Truqui 581, Col. Pimentel, CP 83188, Hermosillo, Sonora, Mexico, Hermosillo, Sonora 83188,

Mexico; R.F.C. FTG950807F20 (Mexico); (ENTITY) [SDNTK]

14. BIOESPORT S.A. DE C.V., Avenida Ave. 13 y Morelos S/N, Colonia Bachoco, Hermosillo, Sonora 83148, Mexico; R.F.C. BIO901025VE2 (Mexico); (ENTITY) [SDNTK]

Individuals

1. GAXIOLA GARCIA, Rigoberto, c/o INMOBILIARIA GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o COPA DE PLATA S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA LA CASTELLANA Y ANEXAS S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA RIO PRESIDIO S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o DISTRIBUIDORA GRAN AUTO S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o GRUPO INDUSTRIAL GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o INMUEBLES SIERRA VISTA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o MOLDURAS DEL NOROESTE S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o DISTRIBUIDORA DE HERMOSILLO GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o FLETES Y TRANSPORTES GAXGAR S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o BIOESPORT S.A. DE C.V., Hermosillo, Sonora, Mexico; Calles Olivares y Eduardo W. Villa, Colonia Olivares, Hermosillo, Sonora, Mexico; Alamos No. 42, Colonia Modelo, Hermosillo, Sonora, Mexico; Avenida de Anza #210, Colonia Pitic, Hermosillo, Sonora, Mexico; Rafael Campoy #307, Pitic, Hermosillo, Sonora, Mexico; Calle de Anza Numero 210, Colonia Pitic, Hermosillo, Sonora, Mexico; Uvalama No. 19, Col Los Sabinos, Hermosillo, Sonora, Mexico; Avenida Adolfo de la Huerta 401, Colonia Pitic, Hermosillo, Sonora, Mexico; Ave Colonizadores 830, Hermosillo, Sonora, Mexico; DOB 25 Jan 1973; Alt. DOB 26 Jan 1973; POB CULIACAN, SINALOA, MEXICO; Citizen Mexico; Nationality Mexico; R.F.C. GAGR730125DC9 (Mexico); C.U.R.P. GAGR730125HSLXRG08 (Mexico); R.F.C. GACR730125 (Mexico); R.F.C. GAGP730125 (Mexico); (INDIVIDUAL) [SDNTK]

2. GARCIA DURAN, Maria Del Rosario, c/o GRUPO INDUSTRIAL GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o INMOBILIARIA GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o MINERA LA CASTELLANA Y ANEXAS S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA RIO PRESIDIO S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MOLDURAS DEL NOROESTE S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o DISTRIBUIDORA DE HERMOSILLO GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o DISTRIBUIDORA GRAN AUTO S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o FLETES Y TRANSPORTES GAXGAR S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o COPA DE PLATA S.A. DE C.V., Culiacan, Sinaloa, Mexico; Prop. Priv y Bldg G. Escoboza, Hermosillo, Sonora, Mexico; Preferico Poniente, Calle Simon Bleyy Manuel I. Loaiza, Colonia Olivaries, Hermosillo, Sonora, Mexico; Calle Clavel No. 1406, Esquina con Calle Rosa, Colonia Margarita, Culiacan, Sinaloa, Mexico; Rafael Campoy #307, Colonia Pitic, Hermosillo, Sonora, Mexico; Calle de Anza Numero 210, Colonia Pitic, Hermosillo, Sonora, Mexico; Av. Uvalama 15, Hermosillo, Sonora, Mexico; Alamos 40, Colonia Modelo, Hermosillo, Sonora, Mexico; Ave Eduardo Villa 333, Col Oliv., Hermosillo, Sonora, Mexico; Calle Uvalama 19 Esq., Blvd Sabinos, Hermosillo, Sonora, Mexico; Uvalama 15 y Sabinos, Col Sabin, Hermosillo, Sonora, Mexico; DOB 12 Sep 1953; POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. GADR531112 (Mexico); R.F.C. GADR521211 (Mexico); (INDIVIDUAL) [SDNTK]

3. GAXIOLA GARCIA, Carlos Alberto, c/o INMUEBLES SIERRA VISTA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o DISTRIBUIDORA GRAN AUTO S.A. DE C.V., Hermosillo, Sonora, Mexico; Calle Angel Garcia Aburto No. 62, Col. Loma Linda, Hermosillo, Sonora, Mexico; Calles Olivares y Eduardo W. Villa, Hermosillo, Sonora, Mexico; Avenida Raul Campoy Numero 307, Colonia Pitic, Hermosillo, Sonora, Mexico; DOB 02 Mar 1978; POB Hermosillo, Sonora, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. GAGC780302H75 (Mexico); C.U.R.P. GAGC780302HSRXRR00 (Mexico); (INDIVIDUAL) [SDNTK]

4. GAXIOLA GARCIA, Maria Elena, c/o INMOBILIARIA GAXIOLA HERMANOS S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o DISTRIBUIDORA GRAN AUTO S.A. DE C.V., Hermosillo, Sonora, Mexico; Calle Rafael Campoy No. 305, Col. Pitic, Hermosillo, Sonora, Mexico; Rafael Campoy Num 307, Hermosillo, Sonora, Mexico; Priv. Bugambilia 55, Colonia Bugambilia, Hermosillo, Sonora, Mexico; DOB 18 Aug 1975; POB Culiacan, Sinaloa, Mexico; Alt. POB Arizpe, Sonora, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. GAGE750818L66 (Mexico); C.U.R.P. GAGE750818MSLXRL11 (Mexico); C.U.R.P. GAGE750818MSLXRL03 (Mexico); R.F.C. GAGE350904 (Mexico); R.F.C. GAGE680511 (Mexico); (INDIVIDUAL) [SDNTK]

5. ARCE BORBOA, Ana Cristina, c/o COPA DE PLATA S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA LA CASTELLANA Y ANEXAS S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA RIO PRESIDIO S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Culiacan, Sinaloa, Mexico; Calle Artesanos No. 255, Colonia Burocrata, Culiacan, Sinaloa, Mexico; Prof. Raul Franco Barreda 97, Fracc. Arboles, Culiacan, Sinaloa, Mexico; DOB 22 May 1961; POB Navolato, Sinaloa, Mexico; Alt. POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. AEBA610522 (Mexico); C.U.R.P. AEBA610522MSLRRN00 (Mexico); C.U.R.P. AEBA610522MSLRRN18 (Mexico); (INDIVIDUAL) [SDNTK]

6. FITCH PARENTE, Jose Elmer, c/o COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA RIO PRESIDIO S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA LA CASTELLANA Y ANEXAS S.A. DE C.V., Culiacan, Sinaloa, Mexico; Francisco I. Madero Numero 145 al Oriente, Colonia Centro, Culiacan, Sinaloa, Mexico; DOB 27 Jan 1965; POB Mazatlan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. FIPJ650127 (Mexico); C.U.R.P. FIPE650127HSLTRL05 (Mexico); (INDIVIDUAL) [SDNTK]

7. FITCH PARENTE, Pablo Antonio, c/o COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Culiacan,

Sinaloa, Mexico; Boulevard Francisco I. Madero Numero 145 al Oriente, Colonia Centro, Culiacan, Sinaloa, Mexico; DOB 24 Mar 1966; POB Mazatlan, Sinaloa, Mexico; Alt. POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. FIPP660324 (Mexico); C.U.R.P. FIPP660324HSLTRB07 (Mexico); (INDIVIDUAL) [SDNTK]

8. FITCH TOVAR, Jose Manuel, c/o COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA LA CASTELLANA Y ANEXAS S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o MINERA RIO PRESIDIO S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o COPA DE PLATA S.A. DE C.V., Culiacan, Sinaloa, Mexico; Rio de la Plata, numero 28, Campo Bello de Mazatlan, Sinaloa, Mexico; DOB 28 Dec 1936; POB Panuco, Concordia, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. FITM361228 (Mexico); (INDIVIDUAL) [SDNTK]
9. DUARTE MUNOZ, Roque (a.k.a. CAMPOS ARREDONDO, Humberto); c/o COMPANIA MINERA DEL RIO CIANURY S.A. DE C.V., Culiacan, Sinaloa, Mexico; DOB 09 Dec 1960; POB Mexico; (INDIVIDUAL) [SDNTK]
10. AGUIRRE CARDONA, Armando, Mexico; DOB 28 Oct 1955; POB Nuevo Leon, Monterrey, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. AUCA551028HNLGRR03 (Mexico); R.F.C. AUCA551028 (Mexico); (INDIVIDUAL) [SDNTK]
11. QUINTERO ARCE, Juan Francisco (a.k.a. ''El Chato''); Mexico; DOB 26 Aug 1959; POB Mocorito, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. QUAJ590826P41 (Mexico); C.U.R.P. QUAJ590826HSLNRN02 (Mexico); (INDIVIDUAL) [SDNTK]
12. LUCERO DE MARTINEZ, Sandra (a.k.a. VALENCIA ZAZUETA, Sandra; a.k.a. LUCERO VALENZUELA, Sandra; a.k.a. VALENZUELA, Sandra; a.k.a. VALENZUELA ZAZUETA, Sandra); Mexico; DOB 29 Oct 1969; POB Nogales, Sonora, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VAZS691029MSRLZN04 (Mexico); C.U.R.P. VAZS691029HSRLZN04 (Mexico); (INDIVIDUAL) [SDNTK]
13. GUZMAN ENRIQUEZ, Juan Luis, Mexico; DOB 24 Jun 1950; POB La Huacana, Michoacan De Ocampo, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. GUEJ500624 (Mexico); C.U.R.P. GUEJ500624HDFZNN06 (Mexico); (INDIVIDUAL) [SDNTK]
14. VEGA SANCHEZ, Jose Raul, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o INMUEBLES SIERRA VISTA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; DOB 19 Oct 1956; POB Cananea, Sonora, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VESR561019HSRGNL09 (Mexico); C.U.R.P. VEXR561019HSRGXL05 (Mexico); (INDIVIDUAL) [SDNTK]
15. FONTES MORENO, Eleazar, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; Avenida Serdan No. 122 Poniente, Altos 10, Hermosillo, Sonora, Mexico; Ave. Real 73, Hermosillo, Sonora 83200, Mexico; DOB 23 Jul 1947; POB Hermosillo, Sonora, Mexico; Citizen Mexico; Nationality Mexico; Passport 260057687 (Mexico); C.U.R.P. FOME470723HSRNRL05 (Mexico); (INDIVIDUAL) [SDNTK]
16. VALENCIA JAIME, Rafael Angel, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; Ave Articulo 123 109, Hermosillo, Sonora 83287, Mexico; DOB 22 Jan 1968; POB Hermosillo, Sonora, Mexico; Citizen Mexico; Nationality Mexico; Passport 02260105052 (Mexico); C.U.R.P. VAJR680122HSRLMF08 (Mexico); (INDIVIDUAL) [SDNTK]
17. BALDENEGRO BASTIDAS, Manuel Dario, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; DOB 11 Jan 1963; POB Hermosillo, Sonora, Mexico; Alt. POB Distrito Federal, Mexico, Mexico; Citizen Mexico; Nationality Mexico; Passport 260000406 (Mexico); C.U.R.P. BABM630111HSLLSN16 (Mexico); C.U.R.P. BABM630111HSLLSN08 (Mexico); (INDIVIDUAL) [SDNTK]

Dated: August 5, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–18419 Filed 8–8–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment to and Republication of System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently known as ''Inspector General Complaint Center Records—VA'' (66VA53) as set forth in the **Federal Register** at 49 FR 10216. VA is amending the system of records by renaming the system, revising the Categories of Individuals Covered by the System, revising the Categories of Records in the System, adding a Purpose(s) section, and amending the Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses, and Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System. Minor nomenclature changes, to reflect current titles and organizational elements, are being made. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received not later than September 10, 2008. If no public comment is received, the amended system will become effective September 10, 2008.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (OOREG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to ''*VAregulations@va.gov.*'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment.

FOR FURTHER INFORMATION CONTACT: Timothy J. McGrath, Attorney Advisor, Department of Veterans Affairs, Office of Inspector General (50C), 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 565–8667; or e-mail comments to *timothy.mcgrath@va.gov.*

SUPPLEMENTARY INFORMATION: This publication is in accordance with the

Privacy Act requirement that agencies publish their amended system of records in the **Federal Register** when there is revision, change, or addition. The VA Office of Inspector General (OIG) has reviewed its systems of records notices and has determined its record system, ''Inspector General Complaint Center Records—VA'' (66VA53), should be amended to reflect evolving technology and procedures and to conform to current practice. The system name is being changed to ''Inspector General Hotline (Complaint Center) Records'' (66VA53) to more accurately reflect the role and mission of the OIG Hotline Division and the records created.

The Categories of Individuals Covered by the System still covers complainants and subjects of those complaints. The text of the section is being amended by defining who those individuals might be.

The Categories of Records in the System is amended to include cellular telephone numbers, e-mail addresses, dates of birth, Social Security Numbers, and final reports by VA OIG divisions or other VA components.

This system of records is also amended by adding a Purposes section. The Purposes section more fully explains the mission of the VA OIG Hotline Division.

There are several changes made to the routine use disclosures including the addition of new routine uses and the deletion of former routine uses. Former routine use number 1 remains the same. Former routine uses numbers 2 and 3 are combined into new routine use number 5. For clarity purposes, former routine use numbers 2 through 10 are deleted in their entirety and new text is substituted. The text changes reflect new routine uses that are consistent with law as well as for the purposes for which the records are maintained. The proposed changes are as follows:

Routine use number 1 remains the same and allows for disclosure of information from the record of an individual in response to an inquiry from a congressional office on behalf of that individual.

Routine use number 2 is a new routine use and is added to reflect that disclosure may be made to the National Archives and Records Administration (NARA). NARA is responsible for archiving records no longer actively used but may be appropriate for preservation, and is responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to NARA in order to determine the proper disposition of such records.

Routine use number 3 allows VA to disclose records to the U.S. Department of Justice. When VA is involved in litigation or an adjudicative or administrative process, or occasionally when another party is involved in litigation or an adjudicative or administrative process, and VA policies or operations could be affected by the outcome of the litigation or process, VA must be able to disclose that information to the court, adjudicative or administrative bodies, or parties involved. This routine use would not constitute authority to disclose records in response to a grand jury or other subpoena under Privacy Act subsection (b) because of the Court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

Routine use number 4 allows disclosure of information to a Federal, state, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational information relevant to the hiring transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

Routine use number 5 allows VA on its own initiative to disclose information, except names and addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, to a Federal, state, local tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of veterans and dependents to a Federal or state agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations.

Routine use number 6 allows disclosure to attorneys representing clients who are subjects of criminal investigations. This routine use is necessary to allow VA to be able to provide information and records to attorneys representing subjects of criminal investigations, including veterans, Federal employees, retirees, volunteers, contractors or private citizens.

Routine use number 7 allows disclosure to the Federal Labor Relations Authority (FLRA) (including its General Counsel) in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections. This release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates. This information is necessary to allow the FLRA to properly investigate and resolve allegations of unfair labor practices brought against VA.

Routine use number 8 allows information to be disclosed to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978. This disclosure is necessary to allow the EEOC access to relevant information.

Routine use number 9 allows information to be disclosed to officials of the Merit Systems Protection Board, and the Office of Special Counsel, in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law. This disclosure is necessary to allow the MSPB and OSC access to relevant information if properly requested.

Routine use number 10 allows disclosure of information, in the course of presenting evidence in or to a court, magistrate, administrative tribunal or grand jury, including disclosures to opposing counsel, in the course of such proceedings in order to further the interests of justice.

Routine use number 11 allows information in this system of records to be disclosed to any source or person, either private or governmental, to the extent necessary to secure from such source or person information relevant to, and sought in furtherance of, a legitimate investigation, review, or inspection.

Routine use number 12 allows disclosure to Federal, state, or local professional, regulatory, or disciplinary

organizations, including but not limited to bar associations, state licensing boards, and similar professional entities, for use in disciplinary proceedings. This routine use is necessary so VA can appropriately provide information about a person's conduct or actions, related to their employment, to an entity that regulates such conduct.

Routine use number 13 allows disclosure of information to individuals or entities with which VA has a contract, subcontract or agreement to perform services. VA must be able to provide information to its contractors or subcontractors in order for them to perform the services of the contract or agreement.

Routine use number 14 is a routine use suggested by the Office of Management and Budget (OMB) for all Privacy Act systems of records, in order to allow for the appropriate mitigation of a possible data breach.

The Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System section is amended to more accurately reflect the advances in technology from solely a paper environment to an electronic one. Records and information are stored electronically in the VA OIG's Master Case Index (MCI) database and servers. Backup records are stored on magnetic disc, tape and CD–ROM and may also be maintained in hard copy format in secure file folders.

Storage: This section is amended to clarify that the particular OIG organization office that conducted the review, inspection or investigation maintains the hard copies of documents and information. The component office will maintain all documents, evidence and work papers compiled or collected. Records and documents are also maintained electronically by being scanned or uploaded into the MCI database, but the documents cannot be searched or retrieved as part of a general search.

Retrievability: This section is amended to reflect that information and records are now retrieved by MCI Hotline case number. In addition, electronic records and information are retrieved by the names of the complainants, names of the subjects of the complaints, as well as such persons' title and Social Security Number if entered in those fields. It is important to note that any scanned documents, reports or other uploaded information that are made part of the case file cannot be searched or retrieved from the MCI database as part of general search.

Safeguards: This section is amended to further describe the administrative, physical and technical safeguards the OIG uses to protect records and information.

Retention and Disposal: This section is amended to reflect that OIG follows retention and disposal authorities approved by the Archivist of the United States.

Record Source Categories: This section is amended to reflect from whom information can be obtained.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: July 24, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

66VA53

SYSTEM NAME:

Inspector General Hotline (Complaint Center) Records (66VA53).

SYSTEM LOCATION:

Department of Veterans Affairs (VA), Office of Inspector General (OIG), Office of Assistant Inspector General for Management and Administration (53), Washington, DC 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by the system: individuals who are the subjects of complaints and complainants. Subjects and complainants may be VA employees or third parties (*e.g.*, a veteran, VA beneficiary, contractor, or private citizen). Complaints and information about OIG employees are also covered in this system. Subjects of Hotline complaints are those alleged to have engaged in wrongdoing or impropriety, either criminal, civil, or administrative, either in the performance of their official VA duties or related to the programs and operations of VA. The allegations are made to the OIG Hotline by complainants, who are individuals who have reported the possible existence of an activity constituting a violation of law, rule or regulation, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety. Complaints also may be made anonymously.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: (1) The name, home and work address, e-mail address, and home, work and cellular phone numbers of the complainant; (2) the name, title, date of birth, Social Security Number and home and work address of the subject of the complaint; and (3) the location and nature of the alleged wrongdoing. The records maintained in this system may also include: (1) documentation and other evidence from the complainant; (2) correspondence between the VA OIG Office of Management and Administration (53) and other components of the Office of Inspector General, agency departments, and the complainant; and (3) restricted reports based on the investigation of the alleged wrongdoing or impropriety.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, Appendix 3.

PURPOSE(S):

Records and information in this system are used to record information related to official complaints made to the VA OIG. The Hotline Division is the OIG's complaint center and serves as the recipient of all types of complaints about impropriety and wrongdoing related to VA programs and operations. The specific information about each complaint, including name of complainant, name of subject, and the allegations of improper conduct, is recorded and then forwarded to the appropriate entity for investigation, review, or resolution. The information is used to provide prompt, responsive, and accurate information regarding the status of Hotline complaints. The information is also used to provide a record of the complaint disposition and statistical information about complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office that is made at the request of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management activities and inspections conducted under authority of Title 44, United States Code.

3. Disclosure may be made to the Department of Justice including United States Attorneys, or in a proceeding before a court, adjudicative body, or other administrative body when the litigation or adjudicative or administrative process is likely to affect VA, its employees, or any of its

components, or when VA, its employees, or any of its components is a party to the litigation process, or has an interest in the litigation or process and the use of these records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with the purpose for which the records were collected.

4. Any information in this system, except the name and address of a veteran, may be disclosed to a Federal, state, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and dependents to a Federal or state agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. To assist attorneys in representing their clients, any information in this system may be disclosed to attorneys representing subjects of investigations, including veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens, except where VA has decided release is inappropriate under Title 5, United States Code, Section 552a(j) and (k).

7. Disclosure of information to Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

8. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

9. Information may be disclosed to officials of the Merit Systems Protection Board, and the Office of Special Counsel, when properly requested in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law.

10. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

11. Any information in this system may be disclosed to any source or person, either private or governmental, to the extent necessary to secure from such source or person information relevant to, and sought in furtherance of, a legitimate investigation, review, or inspection.

12. Any information in this system, except the name and address of a veteran, may be disclosed to Federal, state, or local professional, regulatory, or disciplinary organizations or associations, including but not limited to bar associations, state licensing boards, and similar professional entities, for use in disciplinary proceedings and inquiries preparatory thereto, where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person employed by VA or a person representing a person in a matter before VA. The name and address of a veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

13. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

14. Disclosure of any information within this system may be made when it is suspected or confirmed that the security or confidentiality of information in the system or records has been compromised and VA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the compromised information; and the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Records and information are stored electronically in the VA OIG's MCI (Master Case Index) databases and servers at the OIG's headquarters office at 801 I Street, NW., Washington, DC 20420, in the office of the OIG's Information Technology Division. Backup records are stored on magnetic disc, tape and CD–ROM and may also be retained in hard copy format in secure file folders. The VA OIG Hotline Division is responsible for electronically inputting records and information received from complainants, referrals and correspondence related to the initiation of a Hotline case, and final reports. Information inputted electronically includes all correspondence to and from the complainant, correspondence (including e-mail messages) to and among VA OIG organizational elements about the complaint, and correspondence to and from any VA component to which the Hotline case was referred. Complaints and information about OIG employees, including all investigative reports and work papers, are maintained in electronic files with restricted access limited to those with a need to know the

information in the performance of their official duties in the VA OIG Office of Investigations, VA OIG Human Resources Management Division, VA OIG attorneys, and VA OIG management officials responsible for supervising the VA OIG employee who is the subject of the internal investigation.

Hard copies of records and information are discussed in the storage section below.

STORAGE:

Hard copies of documents and information are maintained by the OIG organization that conducts the review, inspection, or investigation. For example, the Administrative Investigations Division, at VA OIG headquarters, maintains hard copies of an investigative file which contains the case referral from Hotline, the final report, all documentation supporting the final report, draft reports, correspondence, and all information collected as part of the investigation. Similarly, the VA OIG Office of Healthcare Inspections (OHI) maintains hard copies of its Hotline investigations (final reports and supporting documentation) related to individuals at VA OIG headquarters. Other records and information (i.e., work papers) about investigations related to individuals compiled by OHI are maintained in the OHI field office that conducted the investigation. Any internal VA OIG investigations conducted prior to the implementation of electronic files, on VA OIG employees who are the subject of a Hotline complaint, are maintained in hard copy only and are secured in the Office of Investigations, Analysis and Oversight Division (51X). Access to those files is highly restricted.

RETRIEVABILITY:

OIG Hotline cases are assigned a Hotline case number in the MCI system. Records are retrieved by the Hotline case numbers. In addition, electronic records may be retrieved by the names of the complainants and names of the subjects of the complaints, retrieved by such persons' title, or by their Social Security number, if entered. It is important to note that scanned documents, reports and other uploaded information that are made part of the Hotline file are not searched or retrieved from the MCI database as part of a general search. Hard copy paper Hotline files are retrieved by the Hotline case number only.

SAFEGUARDS:

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized information is restricted to authorized OIG personnel on a need-to-know basis. Hard copy records are maintained in offices that are restricted during work hours, or are locked after duty hours. The headquarters building is protected by security guards and access is restricted during non-duty hours. Access to the computerized information is limited to VA OIG employees by means of passwords and authorized user identification codes. Computer system documentation is maintained in a secure environment in the Office of Inspector General, VA Central Office.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with a records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management and Administration (53), Department of Veterans Affairs, Office of Inspector General, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the VA OIG Hotline, under his or her name in this system or wishes to determine the contents of such records should submit a written request to the Assistant Inspector General for Management and Administration (53). However, a majority of records in this system are exempt from the notification requirements under 5 U.S.C. 552a (j) and (k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination as to whether an exemption applies shall be made at the time a request for notification is received.

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name in this system must submit a written request to the Assistant Inspector General for Management and Administration (53). However, a majority of records in this system are exempt from the records access and contesting requirements under 5 U.S.C. 552a (j) and (k). To the extent that records in this system of records are not subject to exemption, they are subject to access and contest. A determination as to whether an exemption applies shall be made at the time a request for access or contest is received.

CONTESTING RECORD PROCEDURES:

(See records access procedures above.)

RECORD SOURCE CATEGORIES:

Information is obtained from VA employees, third parties (e.g., a veteran, VA beneficiary, VA contractor, or private party), the Government Accountability Office, Department of Veterans Affairs records, congressional, Federal, state, and local offices or agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, Public Law 95–452 (IG Act), mandates that the Inspector General recommend policies for and to conduct, supervise, and coordinate activities in the Department of Veterans Affairs and between VA and other Federal, State and local governmental agencies with respect to: (1) The prevention and detection of fraud in programs and operations administered or financed by VA and (2) the identification and prosecution of participants in such fraud. Under the IG Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. This system of records has been created in major part to support the criminal law-related activities assigned by the Inspector General to the Assistant Inspector General for Investigations. These activities constitute a principal function of the Inspector General's Hotline/Complaint Center staff.

In addition to principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints and allegations from various sources concerning the possible existence of activities constituting noncriminal violations of law, rules or regulations; mismanagement; gross waste of funds; abuses of authority or substantial and specific danger to the public health and safety. This system of records also exists to support inquiries by the Assistant Inspectors General for Auditing, for Management and Administration and for Healthcare Inspections into these non-criminal violations. Based upon the foregoing, the Secretary of Veterans

Affairs has exempted this system of records, to the extent that it encompasses information pertaining to criminal law-related activities, from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

5 U.S.C. 552a(c) (3) and (4)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e) (1), (2) and (3)
5 U.S.C. 552a(e)(4) (G), and (H) and (I)
5 U.S.C. 552a(e) (5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

The Secretary of Veterans Affairs has also exempted this system of records to the extent that it does not encompass information pertaining to criminal law-related activities under 5 U.S.C. 552a(j)(2) from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G), (H) and (I)
5 U.S.C. 552a(f)

REASONS FOR EXEMPTIONS:

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Office of Inspector General, e.g., to prevent subjects of investigations from frustrating the investigatory process by discovering the scope and progress of an investigation, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information and to avoid endangering these sources and law enforcement personnel.

[FR Doc. E8–18505 Filed 8–8–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment to System of Records, ''Criminal Investigations—VA''.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently known as ''Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.'' (11VA51) as set forth in the **Federal Register** at 70 FR 76498. VA is amending the system of records by renaming the system, revising the Categories of Individuals Covered by the System, the Categories of Records in the System, the Purpose(s), the Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses, and Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received not later than September 10, 2008. If no public comment is received, the amended system will become effective September 10, 2008.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (OOREG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@va.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Timothy J. McGrath, Attorney Advisor, Department of Veterans Affairs, Office of Inspector General, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 565–8667; or e-mail comments to *timothy.mcgrath@va.gov.*

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended system of records in the **Federal Register** when there is revision, change, or addition. The VA Office of Inspector General (OIG) has reviewed its systems of records notices and has determined its record system, Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc., VA (11VA51) should be amended to reflect evolving technology and procedures and to conform to current practice. The system name is being changed to ''Criminal Investigations'' to more accurately reflect the mission of the OIG Office of Investigations and the records created.

The Categories of Individuals Covered by the System is amended to include VA beneficiaries other than veterans, as well as private citizens whose actions affect or relate to programs and operations of VA. This section is amended slightly by adding some language to clarify those individuals who are or have been subjects of investigations or are those alleged to have violated criminal laws, either Federal or state either in performance of official duties or related to programs or operations of VA.

The Categories of Records in the System is amended to clarify that the records include allegations of specific wrongdoing or crimes committed as well as case progress reports. In keeping with technological advances, information such as names, dates of birth, social security numbers, and home addresses of subjects are maintained in an electronic database instead of on file cards.

This system of records is also amended by adding a Purposes section. The records are used for identifying criminal offenders and alleged offenders, identifying witnesses and documents relevant to the investigation of the allegations and compiling evidence to prove or disprove criminal conduct. The records and information are used in Federal and state grand jury proceedings, pretrial negotiations, plea agreements, pretrial diversions, court hearings, trials or other administrative action against the subject of the investigation.

There are several changes made to the routine use disclosures. Former routine use numbers 1, 4, and 5 remain the same, and former routine use number 13 is now renumbered as number 14. For clarity purposes former routine use numbers 2, 3, 6, 7, 8, 9, 10, 11 and 12 are deleted in their entirety and new text is substituted. The text changes reflect new routine uses that are consistent with law as well as for the purposes for which the records are maintained. The proposed changes are as follows:

Routine use number 1 remains the same and allows for disclosure of information from the record of an individual in response to an inquiry from a congressional office on behalf of that individual.

Routine use number 2 is a new routine use and is added to reflect that disclosure may be made to the National Archives and Records Administration (NARA). NARA is responsible for archiving records no longer actively used but may be appropriate for preservation, and is responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to NARA in order to determine the proper disposition of such records.

Routine use number 3 allows VA to disclose records to the U.S. Department of Justice. When VA is involved in litigation or an adjudicative or administrative process, or occasionally when another party is involved in litigation or an adjudicative or administrative process, and VA policies or operations could be affected by the outcome of the litigation or process, VA must be able to disclose that information to the court, adjudicative or administrative bodies, or parties involved. This routine use would not constitute authority to disclose records in response to a grand jury or other subpoena under Privacy Act subsection (b) because of the Court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

Routine use number 4 remains the same and allows disclosure of information to a Federal, state, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational information relevant to the hiring transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

Routine use number 5 remains the same and allows VA on its own initiative to disclose information, except names and addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of veterans and dependents to a Federal or state agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations.

Routine use number 6 allows disclosure to attorneys representing clients who are subjects of criminal investigations. This routine use is necessary to allow VA to be able to provide information and records to attorneys representing subjects of criminal investigations, including veterans, Federal employees, retirees, volunteers, contractors or private citizens.

Routine use number 7 allows disclosure to the Federal Labor Relations Authority (FLRA) (including its General Counsel) in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections. This release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates. This information is necessary to allow the FLRA to properly investigate and resolve allegations of unfair labor practices brought against VA.

Routine use number 8 allows information to be disclosed to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978. This disclosure is necessary to allow the EEOC access to relevant information.

Routine use number 9 allows information to be disclosed to officials of the Merit Systems Protection Board, and the Office of Special Counsel, in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law. This disclosure is necessary to allow the MSPB and OSC access to relevant information when properly requested.

Routine use number 10 allows disclosure of information, in the course of presenting evidence in or to a court, magistrate, administrative tribunal or grand jury, including disclosures to opposing counsel, in the course of such proceedings in order to further the interests of justice.

Routine use number 11 allows information in this system of records to be disclosed to any source or person, either private or governmental, to the extent necessary to secure from such source or person information relevant to, and sought in furtherance of, a legitimate investigation, review, or inspection.

Routine use number 12 allows disclosure to Federal, state, or local professional, regulatory, or disciplinary organizations, including but not limited to bar associations, state licensing boards, and similar professional entities, for use in disciplinary proceedings. This routine use is necessary so VA can appropriately provide information about a person's conduct or actions, related to their employment, to an entity that regulates such conduct.

Routine use number 13 allows disclosure of information to individuals or entities with which VA has a contract, subcontract, or agreement to perform services. VA must be able to provide information to its contractors or subcontractors in order for them to perform the services of the contract or agreement.

Former routine use number 13 is now renumbered as routine use number 14. It allows disclosure of information to any official charged with responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This routine use is necessary in order to comply with the requirements established by the Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002), to allow disclosure to authorized officials within the President's Counsel on Integrity and Efficiency, who are charged with the responsibility for conducting qualitative assessment reviews of investigative operations for purposes of reporting to the President and Congress on the activities of the OIG.

Routine use number 15 is a suggested routine use by the Office of Management and Budget (OMB) for all Privacy Act systems of records, in order to allow for the appropriate mitigation of a possible data breach.

The Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System section is amended to more accurately reflect the advances in technology from solely a paper environment to an electronic one. Records and information are stored electronically in the VA OIG's MCI database and servers. Backup records are stored on magnetic disc, tape and CD–ROM and may also be maintained in hard copy format in secure file folders.

Storage: This section is amended to clarify that the particular Office of Investigations office that conducted the investigation maintains hard copies of the documents and information. That office will maintain all documents, evidence and work papers compiled or collected. Hard copies of reports and certain administrative documents are also maintained at OIG Headquarters. Records and documents are also

maintained electronically in the MCI database.

Retrievability: This section is amended to reflect that information and records are now retrieved by MCI case number and the name of the subject of the investigation. Scanned documents, reports and other uploaded information that are made part of the electronic case file cannot be searched or retrieved from the MCI database as part of a general search.

Safeguards: This section is amended to further describe the administrative, physical, and technical safeguards the OIG uses to protect records and information.

Retention and Disposal: This section is amended to reflect that OIG follows retention and disposal authorities approved by the Archivist of the United States.

Record Source Categories: This section is amended to reflect from whom information can be obtained.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: July 24, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

11VA51

SYSTEM NAME:

Criminal Investigations (11VA51).

SYSTEM LOCATION:

Department of Veterans Affairs (VA), Office of Inspector General (OIG), Office of Investigations (51), Washington, DC 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by the system: (1) Employees, (2) veterans and other VA beneficiaries, and (3) private citizens, such as contractors, who conduct official business with the VA, or private citizens whose actions affect or relate to the programs and operations of VA. The individuals who are or have been the subjects of investigations are those alleged to have violated criminal laws, either Federal or state, either in the performance of their official duties or related to the programs and operations of VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system include reports of criminal investigations of the OIG, Office of Investigations. These reports may include (1) A narrative summary or synopsis, (2) allegations of specific wrongdoing or crimes committed, (3) progress reports, (4) exhibits or attachments to the reports, (5) internal documentation and memoranda, and (6) affidavits or sworn statements. The name of the subject of an investigation, his or her title, his or her date of birth, his or her social security number, his or her home address, the station at which an investigation took place, the OIG's case number, the time period the investigation took place, and the outcome of the case are maintained in an electronic database and in hard copy files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, Appendix 3.

PURPOSES(S):

The records and information are used for the purpose of identifying individual criminal offenders and alleged offenders, identifying witnesses and documents relevant to the investigation of the allegations, and compiling evidence to prove or disprove criminal conduct. The records and information in the system are used in Federal and state grand jury proceedings, pre-trial negotiations, plea agreements, pre-trial diversions, court hearings and trials. The records and information in the system may also be used in administrative proceedings when administrative action is taken against the subject of the investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office that is made at the request of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management activities and inspections conducted under authority of Title 44, United States Code.

3. Disclosure may be made to the Department of Justice including United States Attorneys, or in a proceeding before a court, adjudicative body, or other administrative body when the litigation or adjudicative or administrative process is likely to affect VA, its employees, or any of its components, or when VA, its employees, or any of its components is a party to the litigation process, or has an interest in the litigation or process and the use of these records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with the purpose for which the records were collected.

4. Any information in this system, except the name and address of a veteran, may be disclosed to a Federal, state, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and dependents to a Federal or state agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. To assist attorneys in representing their clients, any information in this system may be disclosed to attorneys representing subjects of criminal investigations, including veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens, except where VA has decided release is inappropriate under Title 5, United States Code, Section 552a(j) and (k).

7. Disclosure of information to the Federal Labor Relations Authority (FLRA), including its General Counsel, in connection with the investigation and

resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

8. Information may be disclosed to the Equal Employment Opportunity Commission in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

9. Information may be disclosed to officials of the Merit Systems Protection Board, and the Office of Special Counsel, if properly requested, in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law.

10. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

11. Any information in this system may be disclosed to any source or person, either private or governmental, to the extent necessary to secure from such source or person information relevant to, and sought in furtherance of, a legitimate investigation, review, or inspection.

12. Any information in this system, except the name and address of a veteran, may be disclosed to Federal, state, or local professional, regulatory, or disciplinary organizations or associations, including but not limited to bar associations, state licensing boards, and similar professional entities, for use in disciplinary proceedings and inquiries preparatory thereto, where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person employed by VA or a person representing a person in a matter before VA. The name and address of a veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

13. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

14. A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

15. Disclosure of any information within this system may be made when it is suspected or confirmed that the security or confidentiality of information in the system or records has been compromised and VA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the compromised information; and the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Records and information are stored electronically in the VA OIG's MCI (Master Case Index) databases and servers at the OIG's headquarters office at 801 I Street, NW., Washington, DC 20420, in the OIG's Information Technology Division. Backup records are stored on magnetic disc, tape and CD–ROM and may also be retained in hard copy format in secure file folders. Office of Investigations personnel are responsible for electronically inputting records and information into the MCI database. Hard copies of records and information are discussed in the storage section below. Access to electronic records is limited to Office of Investigations personnel and certain other OIG employees with an official need to know the information in the course of their official duties.

STORAGE:

Hard copies of documents and information are maintained by the OIG Office of Investigations office that conducts the investigation. The office that conducts the investigation will maintain all documents, evidence, and work papers compiled or collected in the course of the investigation. Hard copies of reports and attachments and certain administrative documents are also maintained at OIG headquarters. Records and documents are also maintained electronically in the MCI database.

RETRIEVABILITY:

Information and records are retrieved by MCI case number and the name of the subject of the investigation. Scanned documents, reports and other uploaded information that are made part of the electronic file cannot be searched or retrieved from the MCI database as part of a general search.

SAFEGUARDS:

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized information is restricted to authorized OIG personnel on a need-to-know basis. Hard copy records are maintained in offices that are restricted during work hours, or are locked after duty hours. The headquarters building is protected by security guards and access is restricted during non-duty hours. Access to the computerized information is limited to VA OIG employees by means of passwords and authorized user identification codes. Computer system documentation is maintained in a secure environment in the OIG, VA Central Office.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with a records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations (51), Department of Veterans Affairs, Office of Inspector General, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Assistant Inspector General for Investigations under his or her name in this system or wishes to determine the contents of such records

should submit a written request to the Assistant Inspector General for Investigations (51), at the address listed in the preceding paragraph. However, a majority of records in this system are exempt from the notification requirement under 5 U.S.C. 552a(j) and (k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination as to whether an exemption applies shall be made at the time a request for notification is received.

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name in this system must submit a written request to the Assistant Inspector General for Investigations (51). However, a majority of records in this system are exempt from the record access and contesting requirements under 5 U.S.C. 552a(j) and (k). To the extent that records in this system of records are not subject to exemption, they are subject to access and contest. A determination as to whether an exemption applies shall be made at the time a request for access or contest is received.

CONTESTING RECORD PROCEDURES:

(See record access procedures above.)

RECORD SOURCE CATEGORIES:

Information is obtained from VA employees, veterans, private citizens, VA records, private entities, and congressional, Federal, state, and local offices or agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, Public Law 95–452, (IG Act) mandates the Inspector General to recommend policies for, and to conduct, supervise and coordinate activities in the Department of Veterans Affairs (VA) and between VA and other Federal, state, and local governmental agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by VA and the identification and prosecution of participants in such fraud. Under the IG Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. This system of records has been created in major part to support the criminal law-related activities assigned by the Inspector General to the Office of Investigations. These activities constitute the principal function of this staff. In addition to principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints or information from various sources concerning the possible existence of activities constituting noncriminal violations of law, rules or regulations, or mismanagement, gross waste of funds, abuses of authority or substantial and specific danger to the public and safety. This system of records also exists to support inquiries by the Assistant Inspector General for Investigations into these noncriminal violation types of activities. Based upon the foregoing, the Secretary of Veterans Affairs has exempted this system of records, to the extent that it encompasses information pertaining to criminal law-related activities, from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

5 U.S.C. 552a(c)(3) and (4);
5 U.S.C. 552a(d);
5 U.S.C. 552a(e)(1), (2) and (3);
5 U.S.C. 552a(e)(4)(G), (H) and (I);
5 U.S.C. 552a(e)(5) and (8);
5 U.S.C. 552a(f);
5 U.S.C. 552a(g).

The Secretary of Veterans Affairs has exempted this system of records, to the extent that it does not encompass information pertaining to criminal law-related activities under 5 U.S.C. 552a(j)(2), from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4)(G), (H) and (I);
5 U.S.C. 552a(f).

REASONS FOR EXEMPTIONS:

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Office of Inspector General, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

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August 11, 2008

Part II

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Republic of Namibia; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 08–09]

Notice of Entering Into a Compact With the Republic of Namibia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Namibia. Representatives of the United States Government and the Republic of Namibia executed the Compact documents on July 28, 2008.

Dated: August 4, 2008.

Henry Pitney,

Deputy General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Republic of Namibia

1. Introduction

Namibia is a young democracy having gained independence from South Africa in 1990. The country's population of 2.0 million is spread over 823,680 km, an area approximately twice the size, but with a population density one sixtieth, of California. According to the 2001 census, 67 percent of the population lives in rural areas, primarily in the northern communal area (''NCA''), with 12 percent living in the capital, Windhoek. The landscape is largely desert and desert savannah with low, highly variable rainfall. The economy continues to be dependent on the mining industry; with diamonds and other minerals accounting for more than 50 percent of total exports in 2005.

One of the primary constraints to achieving poverty reduction through economic growth in Namibia is an inadequately educated and skilled workforce. In addition, the economy's export base is narrowly focused on mineral commodities, with below-potential levels of revenue and employment generated in sectors of importance to the poor, such as livestock and tourism. While improving the quality of education and training for underserved populations, the Compact will also focus on diversifying Namibia's export base by capitalizing on Namibia's comparative advantages—large areas of semi-arid land suitable for livestock grazing, natural products indigenous to Namibia, and diverse wildlife and unique landscapes ideal for ecotourism. Through these investments, it is expected that incomes will rise for poor, rural communities that have been marginalized from the formal economy by former colonial and apartheid regimes.

Namibia is classified as a lower-middle income country (''*LMIC*'') with a population of 2.1 million, 2006 per capita of $3,000, and a steady economic growth rate averaging 4.3 percent per annum. Despite steady growth, Namibia is plagued by high levels of poverty, particularly in the northern communal areas (''*NCAs*''), high unemployment (30 percent in 2006), an extreme disparity in wealth and income between the rich and the poor (second highest Gini coefficient in the world), and an HIV prevalence rate of nearly 19.6 percent in 2005. Following 25 years of struggle for independence, the government of Namibia (the ''*GRN*'') is committed to providing equal opportunities to previously disadvantaged populations, while advancing interracial reconciliation to maintain political and economic stability.

2. Program Rationale

To sustain GDP growth and increase income levels, Namibia must rely heavily on the availability of skilled labor. Despite high levels of investment in the education sector, the education system is unable to produce the quantity, levels, and types of human resources necessary to meet labor market demands. In 2005, the GRN, with the support of the World Bank, launched an ambitious 15-year reform process, the Education and Training Sector Improvement Program (''*ETSIP*''), to improve education outcomes. The Compact's education project supports ETSIP through strategic investments that leverage policy and institutional reform to maximize the efficiency, accessibility, and quality of the education system.

As a result of the volatility of the mining sector, the GRN is focusing on diversifying Namibia's economy with particular emphasis on two of the fastest growing sectors—agriculture and tourism. Agriculture contributes 11 percent of GDP and earns over 25 percent of export receipts. The livestock sector comprises 90 percent of all agriculture production in the country. Approximately 80 percent of livestock production is exported to the European Union and neighboring southern African countries. Due to increasing population pressures, a lack of flexible and efficient market outlets and the communal land regime in the north, livestock productivity in the north is low. In addition to livestock, there is significant growth potential for the indigenous natural products (''*INP*'') industry in Namibia. The INP industry is expected to grow substantially over the next ten years, allowing for some of the poorest households in Namibia to participate in this emerging industry. Overall, MCC's investments in agriculture are intended to increase rural farmers' productivity and income generated in the livestock and INP sectors, while opening up trade opportunities for meat and exports of high-value natural products such as devil's claw, Kalahari melon seed, marula, and ximenia.

Consistent with the GRNs National Development Plan and long-term national development strategy known as ''Vision 2030,'' Namibia plans to develop one of its fastest growing ''export'' industries with a focus on tourism. Export earnings from international visitors and tourism goods are expected to generate 15.6 percent of total exports ($650.6 million) in 2008 and grow to 22.6 percent ($2.09 billion) by 2018. The GRN recognizes that tourism is an important generator of employment, particularly in rural areas where most tourism in the country occurs. Through MCC's investments in tourism, the GRN intends to catalyze growth in the tourism industry and increase participation by Namibia's poor rural population. To achieve these objectives, the tourism project will improve management and infrastructure in Etosha National Park , the premier tourism destination in Namibia, increase the overall number of tourism arrivals, and induce private investment in communal conservancies.

3. Program Overview and Budget

TABLE 1—PROGRAM BUDGET BY PROJECT

Component	(US$ millions)						
	CIF*	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Education Project	8.97	10.30	29.99	53.32	34.62	7.75	144.97
Tourism Project	2.47	4.71	13.03	23.36	14.79	8.57	66.95
Agriculture Project	1.36	1.56	17.95	14.46	8.43	3.17	46.96
Monitoring & Evaluation	0.72	1.77	1.02	1.02	1.00	1.02	6.57
Program Management and Administration	6.00	6.60	6.60	6.60	6.60	6.60	39.00
Total MCC Funding	19.54	24.95	68.61	98.78	65.44	27.13	304.47

* Compact Implementation Funds (CIF) refer to funding available before the entry-into-force of the Compact.

A. Education Project ($144.97 Million)

The education project is intended to improve the education sector's effectiveness, efficiency, and quality, through systemic reforms and critical near-term interventions. MCC funding will support key gaps within ETSIP, as well as complementary measures, such as institutional strengthening, policy reform, and targeted technical assistance, to ensure sustainable results.

Primary activities include:

• Improving the Quality of Education: Improving infrastructure and providing equipment in approximately 47 primary and secondary school campuses, primarily in the northern communities of Namibia. Additionally, this activity includes support to teacher training colleges for policy-relevant studies and improving science and computer training facilities.

• Vocational and Skills Training: Improving vocational and skills training through assisting with the establishment of a National Training Fund within the Namibia Training Authority and making operational a sustainable training levy system. This includes funding priority projects, including tourism training (through competitive grants), construction and renovation of approximately nine Community Skills Development Centers (''*COSDECs*''), and facilitating private partnerships to address market demands for employment.

• Access to and Management of Textbooks: Upgrading access to and management of textbooks through operational support and reforms to establish more transparent, competitive acquisition processes for new textbooks, and to ensure adequate distribution and management procedures. This includes funding the acquisition of science, math, and English textbooks for grades 5 to 12 on a national level.

• Regional Study and Resource Centers (''*RSRCs*'' or ''*Libraries*''): Construction of approximately three regional Libraries in underserved areas that will improve access to documentation, information resources, training materials and programs, and study facilities.

• Expanding and Improving Access to Tertiary Education Finance: Expanding access to tertiary finance through assisting the Ministry of Education in its efforts to establish a sustainable and widely accessible tertiary and technical education finance system.

• Cross-Project Support: Strengthening the Ministry of Education's HIV/AIDS Management Unit and developing HIV/AIDS awareness and prevention plans related to construction activities.

B. Tourism Project ($66.95 Million)

The tourism project will improve the management and infrastructure of Etosha National Park, enhance the marketing of Namibian tourism, and develop the capacity of communal conservancies to attract investments in ecotourism and capture a greater share of the revenue generated by tourism in Namibia. Together, these activities will generate income and create employment opportunities for some of the poorest populations in Namibia, while preserving the natural resources that serve as the base for the tourism industry.

Primary activities include:

• Improved Management and Infrastructure of Etosha National Park: Improving the management capacity, providing improved infrastructure in management centers and staff housing in strategic locations, and providing road building/maintenance and game translocation equipment.

• Marketing Namibian Tourism: Increasing tourist arrivals to Namibia by ramping up marketing to North American tourists, developing and marketing local and regional tourism route packages (with the explicit aim of directing tourists to conservancies), and developing a fully interactive Web site.

• Ecotourism Development in Conservancies: Building the capacity of conservancies to attract investment, preserve their natural resources and receive a greater share of revenues, through the provision of a range of technical assistance to approximately 31 high-tourism potential conservancies designed to render them financially self-sustainable. In addition, grant funding will be provided, based on individual conservancy needs and demand, to some of these conservancies to attract tourism enterprises.

C. Agriculture Project ($46.96 Million)

The agriculture project aims to increase the economic performance of the agricultural sector by strengthening the land tenure system, introducing community-based rangeland management practices, and building capacity of the livestock system to support farmers' ability to increase productivity and profits from livestock sales. In addition, the project will increase the volume, quality, and added value of INPs for export to regional and international markets.

Primary activities include:

• Land Access and Management: Improving the communal land regime and introducing effective community-based rangeland management practices through a comprehensive public awareness and outreach campaign on land rights, capacity building for Communal Land Boards, a systematic verification and registration process to regularize land, and training in community-based management of rangeland resources.

• Livestock Support: Constructing approximately five new veterinary centers in key, high volume livestock areas, in under-served communities. This includes introducing a traceability system for the livestock supply chain that meets food safety requirements and assists in herd management at the farm level, as well as support for reducing costs and losses, post-farm gate, in the marketing system of livestock in the NCAs.

• Indigenous Natural Products: Assisting primary producer organizations to increase the volume, quality, and added value of the natural products they collect and harvest, in addition to advancing their operational and business capacity. This includes funding research, testing, and application of innovations and services critical to the INP industry's immediate, short- and long-term competitiveness.

4. Program Impact

A. Education Project

The lack of education and training of the Namibian population has been identified in MCC's internal growth diagnostic, by the World Bank, and others as a binding constraint to growth and poverty reduction. As a result, well-designed investments that enhance the efficiency and effectiveness of the education and training sector are expected to have a high economic rate of return.

Expected results of the education project include:

• Over a million students across Namibia will benefit from improved provision of textbooks and higher quality of education.

• An estimated 11,000 additional students will receive financing for tertiary education. By alleviating the high-level skills constraint in the Namibian economy, greater private investment and employment will likely result from an expansion of the tertiary sector. In addition, a more sustainable fiscal framework for tertiary education will shift the distribution of benefits of public education towards the poor.

• Up to 49,000 uneducated and unemployed (poor or near-poor) individuals over 20 years will receive training at the Community Skills and Development Centers.

• An estimated 2,000 additional vocational training graduates over a 20 year period will receive higher income due to improved training opportunities through the National Training Fund.

• Over the course of 20 years, 47 schools targeted for renovation and expansion will produce approximately 41,700 graduates in primarily rural northern communities. These graduates will benefit from a higher quality of education and higher lifetime income.

• Regional study and resource centers will meet the information and study needs of an estimated 8,000 individuals a year (about ten percent of the population of the towns where the centers are located), including upper primary, secondary and post-secondary students enrolled in distance learning, young people seeking skills upgrading, small business owners using computer facilities, and adults attending continuing education courses.

B. Tourism Project

Over the past 10 years, Namibia's tourism sector has enjoyed strong growth of 6.9 percent per annum (source: World Travel and Tourism Council 2007). However, stronger or more sustained tourism growth could be achieved through an enhanced marketing effort and improved wildlife and natural resource management, which would improve the tourism experience in Namibia's national protected areas.

Expected results of the tourism project include:

• An estimated 4,000 additional tourists per year as a result of marketing activities, and incremental added value by overseas tourists of approximately $7 million. Based on a recent study of the benefits of the national protected areas, the benefits will be shared in proportions similar to the wider tourism economy, in which approximately 24 percent of the benefits will accrue to the poor or near-poor.

• Investments in Etosha National Park will lead to increased tourism visits and added value to the Namibian economy, as well as increased income and receipts at Etosha National Park. The investments in Etosha National Park, combined with those for increased tourism marketing, will result in increased wages for an estimated 23,000 new employees in the tourism industry.

• An estimated 7,000 individuals are likely to enjoy significantly higher income as a result of full and part time employment generated through this project. Another 111,000 conservancy residents are expected to receive benefits through dividends or community-level projects.

C. Agriculture Project

MCC interventions will improve the security of land rights, the equitableness of access to land, the productivity and sustainability of communal rangeland resources, the productivity of herds, and the efficiency of livestock marketing and quarantine in the north. These activities—in particular, the land access and management activity—will create enabling conditions for communal and poor farmers to benefit from future public investments in the livestock sector.

Despite rapid growth in the INP sector, additional funding is necessary to improve coordination in preserving scarce renewable resources, address the lack of skills of primary producers, and catalyze research and development in the sector.

Expected results of the agriculture project include:

• Over 130,000 individuals, primarily in the north, will benefit from improved market efficiency, improved land tenure security, and more equitable access to land. Fifty communities, with an average of 36 cattle-owning households, will potentially benefit from the rangeland management component.

• The INP activity is expected to increase incomes for over 200,000 households, and to increase incomes for primary producers, a majority of whom are poor and female, and for whom small increases in cash income can represent important supplementary household income.

5. Program Management

The GRN will incorporate the Compact program into its existing government systems. The National Planning Commission (''*NPC*''), a ministry-level government agency charged with directing development resources, has been proposed as the designated accountable entity (''*MCA*-Namibia''). As such, it will have overall responsibility for the oversight, management, and implementation of the program. A program implementation unit within NPC will be responsible for the day-to-day administration of the Compact. In addition, the GRN has proposed that the Ministries of Education; Agriculture, Water and Forestry; and Environment and Tourism, assist in the implementation of the specific projects to ensure integration, coordination, and sustainability of MCC's investments.

A. MCA-Namibia Board of Directors

The NPC commissioners will serve as the MCA-Namibia Board of Directors. The commission currently consists of 14 members, six of whom are GRN officials specified by the NPC's enabling statute, with the remaining members appointed by the President of Namibia. As the six specified GRN officials do not include representatives from the Ministry of Education or the Ministry of Environment and Tourism, the GRN has agreed that two of the appointed commission member slots will be filled with representatives from these ministries. The remaining appointed board members will be civil society and private sector members, selected by the President based on their expertise in the development field.

MCA-Namibia will rely on existing consultative committees to serve as stakeholder committees for each project. These committees include members

from the public and private sectors, and civil society. They are broad-based and offer relevant technical expertise plus a solid understanding of socioeconomic and environmental realities in Namibia.

B. MCA-Namibia Program Implementation Unit

Senior management of MCA-Namibia will consist of the chief executive officer (CEO); two deputy CEOs; director of administration and finance; project director for education, tourism and agriculture; environment and social assessment manager; monitoring and evaluation manager; legal advisor; and procurement manager. In addition to other standard operational staff, much of the technical expertise will come from government affiliates. To support MCA-Namibia and strengthen financial and procurement controls, MCA-Namibia will competitively recruit an external fiscal agent and procurement agent.

6. Program Assessment

A. Consultative Process

The GRN initiated consultations in all 13 regions of the country in mid-2006. These consultations have been ongoing particularly in those sectors that the Compact program will support. Stakeholders included government officials at national and regional levels, local authority counselors and stakeholders, regional coordination committees, regional AIDS committees, regional emergency units, land boards, farmers associations, conservancy groups, women's associations, church groups, youth groups, vulnerable members of society, non-governmental organizations, community-based organizations, and the private sector. An important and noteworthy aspect of the consultative process is the absence of major divergence between the issues identified at national and regional levels. This appears to confirm that, in general, there is consensus within Namibia on priorities for economic growth—a consensus built on previous consultative processes for Vision 2030, the National Development Plans, Participatory Poverty Assessments, and other sector-level consultations.

MCA-Namibia, in close consultation and cooperation with the stakeholders for each of the program components, will continue to consult and inform Namibians country-wide on the Compact to ensure broad-based understanding, appreciation, commitment, and ownership of the program.

B. Government Commitment

The GRN has demonstrated commitment to the Compact development process by fully funding an MCA-Namibia core team since mid-2006, undertaking efforts to enhance performance on MCC Selection Indicators, proposing an ambitious lower-middle income country (''*LMIC*'') counterpart contribution, and adopting certain sector-specific policy reforms that are complementary to the Compact activities.

- Ongoing Effort of MCA-Namibia Core Team: GRN commitment to the program is evidenced by a budgetary commitment to the Compact development process amounting to over $1.55 million over two years, the establishment of a 13-member MCA-Namibia core team, and the provision of significant office space and equipment for the MCA-Namibia core team in Windhoek. Coordinated by MCA-Namibia, GRN officials and other non-governmental stakeholders have been engaged in refining the proposal over the past year and half.
- MCC Eligibility Criteria: The GRN is in the process of developing a Performance Improvement Plan (''*PIP*'') to enhance Namibia's performance on the specific indicators where it falls below the median, namely girls' primary education completion, immunization rates, natural resource management, land rights and access, costs of starting a business, and fiscal policy. In addition, the GRN has named a senior-level point of contact within the Office of the President to lead and oversee the indicator performance enhancement efforts. MCC anticipates that the GRN will submit the PIP by mid-2008.
- LMIC Country Contribution: The GRN has proposed a substantial counterpart contribution to the Compact, which primarily entails investments in complementary sector programs of ETSIP, livestock, and management and business plans for Etosha National Park. In addition, the GRN is committing to fund a significant portion of the additional line ministry staff expenses required for Compact implementation, such as increased staff resources from the Directorate of Veterinary Services and the Ministry of Education. As part of ensuring sustainability of MCC investments, the GRN will provide upfront, detailed budget commitments for all additional recurrent expenditures required for the staffing, operations, and maintenance of all infrastructure included in the Compact.
- Sector-Specific Policy Reforms: The GRN has made several notable advancements in the education, tourism, and agriculture sectors, encompassing:

Education Project

- Enactment of the National Training Fund within the Namibia Training Authority under the Vocational Education and Training Act of 2008;
- Establishment and staffing of the National Training Authority;
- Approval of a new National Textbook Policy for primary and secondary schools (2008); and
- Adoption of policies for the Colleges of Education to allow for their semi-autonomy and introduction of performance contracts.

Tourism Project

- Adoption of Ministry of Environment and Tourism Strategic Plan;
- Adoption of Etosha National Park Management Plan and Business Plan; and
- Passage of the Environmental Management Bill into law establishing mandatory environmental review and mitigation procedures in Namibia (2007).

Agriculture Project

- Drafting the Access to Genetic Resources and Associated Traditional Knowledge bill that regulates the methods of harvesting and cultivation of indigenous natural products (passage into law by the Namibian Parliament and enactment by its President pending).

C. Environmental and Social Assessment

Education Project

The education project is considered a Category B project due to the environmental and social impacts that will result from the activities. The GRN will identify and assess environmental impacts as a result of detailed design work completed prior to entry into force. Limited resettlement impacts are anticipated to result from the education project. MCA-Namibia and the Ministry of Education have been coordinating with local communities on the acquisition of land in compliance with World Bank Operational Policy 4.12 on Involuntary Resettlement in advance of the MCC investments. No resettlement impacts are anticipated to result from the infrastructure investments at the general schools.

The education project is expected to lead to beneficial gender and social impacts by providing improved services and facilities to targeted communities. The COSDECs will benefit unemployed

youth, women, and low-skilled adults by providing training in entrepreneurship, business management, and other vocational skills critical to the local labor market. The proposed improvements at the approximately 47 general schools, including the provision of water and sanitation and new construction designs that provide disability access, will improve the quality of and access to schools for female and disabled learners.

HIV/AIDS education needs strengthening as the guidance and support to teachers and trainers is limited. HIV/AIDS awareness and prevention plans will also be implemented on construction contracts, where each facility is located for the schools, COSDECs, and RSRCs.

Tourism Project

The tourism project is categorized as a Category A project due to potential site-specific environmental and social impacts in sensitive areas anticipated from the construction of national park management centers in fragile ecosystems home to small populations of vulnerable ethnic groups. Tourism development activities supported through an independent fund established to provide community-based wildlife organizations with equity shares in tourism joint-ventures and support for wildlife relocation activities will be classified as Category D. While the environmental and social impacts of Compact-supported tourism activities are not anticipated to be significant in nature, they are occurring in sensitive areas and will require mitigation through environmental management plans, as well as support to ongoing voluntary resettlement actions to provide land for the San ethnic group outside of national parks.

The construction and rehabilitation of management centers in Etosha National Park will require an environmental impact assessment and site-specific environmental management plans. Social safeguards associated with the Etosha National Park management centers will include the implementation of HIV/AIDS awareness and prevention programs for both national park staff and construction contractors, and conditions to ensure park employees have access to schools for their children.

Women and vulnerable groups have been actively involved in land management, resource governance, and revenue-generating activities through the tourism sector in Namibia, and MCC's investment will ensure their continued participation. Membership in the conservancies is almost equally split between men and women, and as of January 2006, women comprised 37 percent of all conservancy management committee members. Underrepresented groups, such as San and Himba peoples, are active members in conservancies in their traditional homelands, which provide them with revenue generating opportunities previously unavailable, and MCC funding will be used to increase economic opportunities through tourism on conservancies in San and Himba homelands.

Agriculture Project

The land access and management activity is a Category B activity due to potential site-specific environmental impacts stemming from land use management decisions. These impacts are not anticipated to be significant and can be mitigated through environmental management plans and participatory community-level decision making processes.

The communal land support sub-activity is intended to reduce land degradation and provide more secure access to land for the residents of the NCAs. Additionally, the community-based rangeland and livestock management sub-activity is intended to improve the productivity of grasslands and provide communities with the ability to plan their grazing for more sustainable land use. However, MCC-funded interventions intended to improve land use and clarify ownership rights could lead to the involuntary loss of livelihood access or resettlement if community-based land use planning actions are abused by elites.

The livestock support activity is a Category B activity due to potential site-specific environmental impacts resulting from the construction and operation of veterinary centers, rehabilitation of quarantine camps, and construction of community, municipal or private sector livestock marketing facilities through matching funds from MCC. As the livestock market efficiency improvement intervention involves an intermediate funding facility, it is a Category D investment. While these impacts are not anticipated to be significant in nature, they will require mitigation through environmental management plans.

MCA-Namibia will procure an environmental assessment to analyze potential environmental impacts of the livestock infrastructure construction and rehabilitation, and develop site-specific environmental mitigation plans for each site. Given the remote location of these facilities, specific measures will need to be integrated into the final design of these facilities to ensure proper disposal so that untreated wastes do not go directly into streams or rivers, as is the case in some areas.

For any veterinary infrastructure built through the livestock market efficiency improvement fund, MCA-Namibia will develop environmental screening and siting criteria, as well as guidelines for environmental procedures to follow during construction and operation of these facilities. Periodic and random performance audits of infrastructure funding recipients will take place to ensure they are complying with these requirements.

The INP activity is a Category A activity due to potentially significant environmental impacts anticipated to result from increased harvesting, utilization, and export of species listed for protection under the Convention on the International Trade of Endangered Species.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Republic of Namibia

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Millennium Challenge Compact Preamble

This Millennium Challenge Compact (this ''*Compact*'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''*MCC*''), and the Republic of Namibia (''*Namibia*'') (individually a ''*Party*'' and collectively, the ''*Parties*'').

Recalling that Namibia consulted with the private sector and civil society of the Republic of Namibia to determine the priorities for the use of Millennium Challenge Account assistance and developed and submitted to MCC a proposal focused on poverty reduction through improving human resources, capacities and skills, enhancing public and private sector investment in tourism and increasing agricultural productivity; and

Recognizing that MCC wishes to help the Republic of Namibia implement a program to achieve the goal and objectives described herein (the ''*Program*'');

Capitalized terms used herein shall have the meanings specified in Annex V hereto.

The Parties hereby agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal

The goal of this Compact is to reduce poverty in the Republic of Namibia through economic growth (the ''*Compact Goal*'').

Section 1.2 Program Objective

The objective of the Program (as further described in Annex I) (the ''*Program Objective*'') is to increase the competence of the Namibian workforce (knowledge, skills and attitude), and increase the productivity of agricultural and non-agricultural enterprises in rural areas.

Section 1.3 Project Objectives

The objectives of the Projects (as further described in Annex I) (each a ''*Project Objective*'' and collectively, the ''*Project Objectives*'') are:

(a) The objective of the Education Project is to improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic, vocational, and tertiary education and of technical skills.

(b) The objective of the Tourism Project is to grow the Namibian tourism industry with explicit targeting of income streams to conservancy households.

(c) The objective of the Agriculture Project is to increase the total value added from livestock in the northern communal areas of the Republic of Namibia and to increase income from indigenous natural products accruing to the poor nationwide.

Article 2. Funding and Resources

Section 2.1 Program Funding

MCC hereby grants to Namibia, under the terms of this Compact, an amount not to exceed Three Hundred Four Million Four Hundred Seventy-Seven Thousand Eight Hundred Sixteen United States Dollars (US$304,477,816) (''*Program Funding*'') for use by Namibia to implement the Program. The allocation of Program Funding is generally described in Annex II to this Compact.

Section 2.2 Compact Implementation Funding

(a) MCC hereby grants to Namibia, under the terms of this Compact, in addition to the Program Funding described in Section 2.1, an amount not to exceed Nineteen Million Five Hundred Forty-Three Thousand One Hundred Seventy-Five United States Dollars (US$19,543,175) (''*Compact Implementation Funding*'') under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''*MCA Act*''), for use by Namibia for the following purposes:

(i) Fiscal and procurement administration activities and costs (including, for example, costs related to standby agents procured by MCC);

(ii) Administrative activities including start-up costs such as staff salaries and administrative support expenses such as rent, computers and other information technology or capital equipment;

(iii) Baseline surveys for monitoring and evaluation;

(iv) Additional work for feasibility studies and development of technical scopes; and

(v) Other Compact implementation activities approved by MCC.

The allocation of Compact Implementation Funding is generally described in Annex II to this Compact.

(b) Notwithstanding Section 7.3 of this Compact, as of the date that this Compact is signed by MCC and Namibia (i) this Section 2.2 shall be effective, and (ii) any other provisions of this Compact applicable to Compact Implementation Funding shall be effective for purposes of Compact Implementation Funding only, *provided that* the MCA-Namibia Procurement Rules will only be effective after ratification of this Compact by Namibia.

(c) Each Disbursement (as defined in Section 2.4) of Compact Implementation Funding shall be subject to satisfaction of the conditions to such disbursement as set forth on Annex IV.

(d) If, after the first anniversary of this Compact entering into force, MCC determines that the full amount of Compact Implementation Funding under Section 2.2(a) of this Compact exceeds the amount which reasonably can be utilized for the purposes and uses set forth in Section 2.2(a) of this Compact, MCC, by written notice to Namibia, may withdraw the excess amount, thereby reducing the amount of the Compact Implementation Funding as set forth in Section 2.2(a) (such excess, the ''*Excess CIF Amount*''). In such event, the amount of Compact Implementation Funding granted to Namibia under Section 2.2(a) will be reduced by the Excess CIF Amount, and MCC will have no further obligations with respect to such Excess CIF Amount.

(e) MCC, at MCC's option by written notice to Namibia, may elect to grant to Namibia an amount equal to all or a portion of such Excess CIF Amount as an increase in the Program Funding, and such additional Program Funding will be subject to the terms and conditions of this Compact applicable to Program Funding.

Section 2.3 MCC Funding

Program Funding and Compact Implementation Funding are collectively referred to in this Compact as ''MCC Funding.''

Section 2.4 Disbursement

In accordance with this Compact and the Program Implementation Agreement (as defined in Section 3.1), MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a ''*Disbursement*''). Subject to the satisfaction of all applicable conditions, the proceeds of such Disbursements will be made

available to Namibia, at MCC's sole election, by (a) deposit to one or more bank accounts established by Namibia and acceptable to MCC (each, a ''*Permitted Account*'') or (b) direct payment to the relevant provider of goods, works or services in connection with the implementation of the Program. MCC Funding may be expended only to cover Program expenditures as provided in this Compact and the Program Implementation Agreement.

Section 2.5 Interest

Namibia will pay to MCC any interest or other earnings that accrue on MCC Funding in accordance with the Program Implementation Agreement (whether by directing such payments to a bank account outside Namibia that MCC may from time to time indicate or as otherwise directed by MCC).

Section 2.6 Namibia Resources; Budget

(a) In accordance with Section 609(b)(2) of the MCA Act, Namibia will make a contribution towards meeting the Objectives of this Compact. Annex II describes such contribution in more detail. In addition, Namibia will provide all funds and other resources, and will take all actions, that are necessary to carry out Namibia's responsibilities and obligations under this Compact.

(b) Namibia will use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(c) Namibia will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(d) Unless Namibia discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that Namibia would otherwise receive or budget for the activities contemplated under this Compact and the Program.

Section 2.7 Limitations on the Use of MCC Funding

Namibia will ensure that MCC Funding will not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to Namibia in writing or by posting on the MCC Web site at *http://www.mcc.gov* (the ''MCC Web site''), including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, as further described in MCC's Environmental Guidelines posted on the MCC Web site (the ''*MCC Environmental Guidelines*''); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.8 Taxes

(a) Unless the Parties otherwise specifically agree in writing, and subject to the provisions of Sections 2.8(b)(ii) and (iii) and 2.8(c), Namibia will ensure that each of the following is free from the payment of any existing or future taxes, duties, levies, contributions or other similar charges (''*Taxes*'') of or in Namibia (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Namibia): (i) The Program; (ii) MCC Funding; (iii) interest or earnings on MCC Funding; (iv) any Project or activity implemented under the Program; (v) MCA-Namibia (as defined in Section 3.2(b)) (vi) goods, works, services, technology and other assets and activities under the Program or any Project; (vii) persons and entities that provide such goods, works, services, technology and assets or perform such activities; and (viii) income, profits and payments with respect thereto. The Parties acknowledge and agree that the foregoing includes, inter alia, value added and other transfer taxes, profit and income taxes, property and ad valorem taxes, import and export duties and taxes (including for goods imported and re-exported for personal use), withholding taxes, payroll taxes, and social security and social insurance contributions.

(b) The GRN and the USG may, at MCC's discretion, enter into one or more agreements setting forth the mechanisms for implementing this Section 2.8, including (i) waivers of certain filing and compliance requirements relating to Taxes, (ii) an agreement on exceptions to Section 2.8(a) above for fees or charges for services that are generally applicable in Namibia, reasonable in amount and imposed on a non-discriminatory basis, and (iii) one or more mechanisms to implement the provisions of Section 2.8(a) with respect to all or any of the Taxes that would otherwise be applicable, which may include exemptions from payment of such Taxes that have been granted in accordance with applicable law, refund or reimbursement of such Taxes by the Namibia to MCC or to the taxpayer, or payment by Namibia to MCA-Namibia or MCC, for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in Section 2.8(a).

(c) The provisions of Section 2.8(a) shall not apply to income Taxes on and contributions with respect to individuals who are nationals of Namibia and individuals who are ordinarily resident in Namibia, *provided that* such Taxes and contributions are equitable and are generally applicable to all nationals in Namibia.

(d) If a Tax has been paid contrary to the requirements of this Section 2.8 or any agreement entered into pursuant to this Section 2.8, Namibia will refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in Namibia Dollars within thirty (30) days (or such other period as may be agreed in writing by the Parties) after Namibia is notified in writing (whether by MCC or MCA-Namibia) that such Tax has been paid.

(e) No MCC Funding, proceeds thereof or Program assets may be applied by Namibia in satisfaction of its obligations under this Section 2.8.

Section 2.9 Lower Middle Income Countries

Section 606(b) of the MCA Act restricts the amount of assistance that MCC may provide to ''lower middle income countries,'' a term that is defined in the MCA Act and includes Namibia. To the extent that MCC determines, in MCC's reasonable discretion, that the amount of Program Funding granted to Namibia in this Compact may result in a violation of Section 606(b) of the MCA Act, MCC, at any time and from time to time upon written notice to Namibia, may reduce the amount of Program Funding, or withhold any Disbursement of Program Funding, to avoid or remedy such a violation.

Article 3. Implementation

Section 3.1 Program Implementation Agreement

Namibia will implement the Program in accordance with this Compact and as further specified in an agreement entered into between the GRN and the USG relating to, among other matters, implementation arrangements, fiscal accountability and disbursement and use of MCC Funding (the ''*Program Implementation Agreement*'' or ''*PIA*'').

Section 3.2 Responsibilities

(a) Namibia has principal responsibility for overseeing and managing the implementation of the Program.

(b) Namibia hereby designates the National Planning Commission (''NPC''), a governmental entity established under the laws of the Republic of Namibia pursuant to the National Planning Commission Act, 1994 (the ''*NPC Act*''), as the accountable entity to implement the Program and to perform Namibia's rights and responsibilities to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and their activities, allocating resources and managing procurements. The NPC, acting in such designated capacity, will be referred to herein as ''*MCA-Namibia*,'' and has the authority to bind Namibia with regard to all Program activities. The designation of this Section 3.2(b) will not relieve Namibia of any obligations and rights, for which Namibia retains full responsibility.

(c) Namibia will ensure that no current law or regulation in Namibia makes unlawful or otherwise prevents or hinders the performance of any of Namibia's obligations under this Compact, the PIA or any other related agreement or any transaction contemplated hereby or thereby. Furthermore, Namibia will use its best efforts to ensure that no future law or regulation in Namibia will make unlawful or otherwise prevent or hinder the performance of any of Namibia's obligations under this Compact, the PIA or any other related agreement or any transaction contemplated hereby or thereby.

(d) Namibia will ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding will be used solely in furtherance of this Compact and the Program unless otherwise agreed by MCC in writing.

(e) Namibia will take all necessary or appropriate steps to achieve the Program Objective and Project Objectives during the Compact Term (as defined in Section 7.4).

Section 3.3 Policy Performance

In addition to undertaking the specific policy, legal and regulatory reform commitments identified in Annex I (if any), Namibia will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

Section 3.4 Assurances

Namibia assures MCC that:

(a) As of the date this Compact is signed by Namibia, the information provided to MCC by or on behalf of Namibia in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects;

(b) This Compact, upon its ratification by Namibia, does not, and will not, conflict with any other obligation of Namibia, any other international agreement or obligation of Namibia or any of the laws of Namibia; and

(c) Namibia will not invoke any of the provisions of its internal law to justify or excuse a failure to perform its duties or responsibilities under this Compact.

Section 3.5 Implementation Letters

To assist Namibia in the implementation of this Compact, from time to time, MCC may issue implementation letters that will furnish additional guidance about implementation of this Compact, the PIA or other related agreements (each, an ''*Implementation Letter*''). The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects related to the implementation of this Compact, the PIA or other related agreements. Such Implementation Letters will be applied when implementing the Program.

Section 3.6 Procurement

Namibia will ensure that the procurement of all goods, works and services by Namibia or any Provider (as defined in Section 3.7(c)) to implement the Program will be consistent with the MCA-Namibia Program Procurement Rules attached hereto as Annex VI (the ''*MCA-Namibia Procurement Rules*'') as provided for in the Program Implementation Agreement. The Procurement Rules will include, among others, the following requirements:

(a) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(b) Solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(c) Contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

Section 3.7 Records; Accounting; Covered Providers; Access

(a) Namibia Books and Records. Namibia will maintain, and will use its best efforts to ensure that all Covered Providers (as defined in Section 3.7(c)) maintain accounting books, records, documents and other evidence relating to the Program adequate to show to MCC's satisfaction the use of all MCC Funding (''*Compact Records*''). In addition, Namibia will furnish or cause to be furnished to MCC, upon its request, all such Compact Records.

(b) Accounting. Namibia will maintain and will use its best efforts to ensure that all Covered Providers maintain Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at Namibia's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Board, or (ii) then prevailing in Namibia. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Providers and Covered Providers. Unless the Parties agree otherwise in writing, a ''*Provider*'' is (i) any entity of Namibia that receives or uses MCC Funding or any other Program asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of Namibia) during the Compact Term. A ''*Covered Provider*'' is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Namibia fiscal year or any other non-United States person or entity that

receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Namibia fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, Namibia, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized United States inspector general, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or Namibia to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews

(a) Audits. Except as the Parties may otherwise agree in writing, Namibia will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all Disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term, in accordance with the terms of the Program Implementation Agreement. In addition, upon MCC's request, Namibia will ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General of MCC (the ''*Inspector General*'') or a United States-based certified public accounting firm selected in accordance with the ''Guidelines for Financial Audits Contracted by MCA'' (the ''*Audit Guidelines*'') issued and revised from time to time by the Inspector General, which are posted on the MCC Web site. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit must be completed and the audit report delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of United States Entities. Namibia will ensure that agreements between Namibia or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, that are financed with MCC Funding state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A–133 issued by the United States Government Office of Management and Budget (''*OMB*''). Namibia will ensure that agreements between Namibia or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States for-profit organization is subject to audit by the applicable United States Government agency, unless Namibia and MCC agree otherwise in writing.

(c) Corrective Actions. Namibia will use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of Namibia's records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of Namibia's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact.

Article 4. Communications

Section 4.1 Communications

Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

To MCC:

Millennium Challenge Corporation, Attention: (a) Before this Compact enters into force, Vice President, Compact Development; and (b) after this Compact enters into force, Vice President, Compact Implementation, (in each case, with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, *Telephone:* (202) 521–3600, *E-mail: VPDevelopment@mcc.gov* (Vice President, Compact Development), *VPImplementation@mcc.gov* (Vice President, Compact Implementation), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To Namibia:

The Director General, National Planning Commission, Office of the President, Government Office Park, Luther Street, Block D, Room 206, Private Bag 12005, Windhoek, Republic of Namibia, *Tel:* +264 61 283 4222, *Fax:* +264 61 250 751.

with a copy to:

MCA-Namibia, Attention: Chief Executive Officer, c/o National Planning Commission, Office of the President, Government Office Park, Luther Street, Block D, Room 206, Private Bag 12005, Windhoek, Republic of Namibia, *Tel:* +264 61 283 4222, *Fax:* +264 61 250 751.

Section 4.2 Representatives

For all purposes of this Compact (including, without limitation, signing agreements supplemental to this Compact), Namibia will be represented by the individual holding the position of, or acting as, the Director General of NPC, and MCC will be represented by (a) before this Compact enters into force, the individual holding the position of, or acting as, Vice President, Compact Development, and (b) after this Compact enters into force, the individual holding the position of, or acting as, Vice President, Compact Implementation (each of the foregoing, a ''*Principal Representative*''). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an ''*Additional Representative*'') for all purposes other than signing amendments to this Compact. Namibia hereby designates the chief executive officer of MCA-Namibia as an Additional Officer. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures

With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail will be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Refunds

Section 5.1 Termination; Suspension

(a) Either Party may terminate this Compact without cause in its entirety by giving the other Party thirty (30) days' written notice.

(b) MCC may, immediately, upon written notice to Namibia, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC, in its reasonable discretion, as a basis for suspension or termination has occurred, which circumstances include but are not limited to the following:

(i) Namibia fails to comply with its obligations under this Compact, the PIA or any other agreement or arrangement entered into by Namibia in connection with this Compact or the Program;

(ii) An event or series of events has occurred that MCC determines makes it probable that the Program Objective or any of the Project Objectives will not be achieved during the Compact Term or that Namibia will not be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of the Program violates or would violate applicable law or United States Government policy, whether now or hereafter in effect;

(iv) Namibia or any other person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) an act has been committed or an omission or an event has occurred that would render Namibia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) Namibia has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Namibia for assistance under the MCA Act ; and

(vii) Namibia or another person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon expiration, suspension, or termination of this Compact; *provided, however,* MCC Funding may be used, in compliance with this Compact and the PIA, to pay for (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of the Program before expiration, suspension or termination of this Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration, suspension or termination of this Compact, so long as the request for such expenditures is submitted within ninety (90) days after such expiration, suspension or termination.

(d) Subject to Section 5.1(c), upon the expiration, suspension or termination of this Compact, (i) any amounts of MCC Funding not disbursed by MCC to Namibia will be automatically released from any obligation in connection with this Compact, and (ii) any amounts of MCC Funding disbursed by MCC but not expended before the expiration, suspension or termination of this Compact, plus accrued interest thereon will be returned to MCC within thirty (30) days after Namibia receives MCC's request for such return; *provided, however,* that if this Compact is suspended or terminated in part, MCC may request a refund for only the amount of MCC Funding allocated to the suspended or terminated portion.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that Namibia or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any asset acquired in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact, then MCC may require Namibia to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after Namibia's receipt of MCC's request for repayment. Namibia will not use MCC Funding, proceeds thereof or Program assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund will continue during the Compact Term and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival

Namibia's responsibilities under Sections 2.4, 2.6, 2.7, 3.7, 3.8, 5.1(c), 5.1(d), 5.2, 5.3, 5.4 and 6.2 of this Compact will survive the expiration, suspension or termination of this Compact.

Section 5.4 Post-Termination Discussions

Following the termination of this Compact pursuant to Section 5.1(b), at Namibia's request, the Parties will meet at a mutually convenient time and location for the purpose of notifying Namibia of the circumstances or reasons for such termination to the extent it has not previously received such notice. Notwithstanding the Parties' agreement to meet, which will be honored in good faith, any matters discussed will be non-binding (unless otherwise agreed and recorded by the Parties), will not give rise to a claim by either Party, and MCC will not be obligated to reinstate the Compact following any such meeting.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex to this Compact constitutes an integral part hereof, and references to ''Annex'' mean an annex to this Compact unless otherwise expressly stated.

Section 6.2 Amendments

(a) The Parties may amend this Compact only by a written agreement signed by the Principal Representatives.

(b) Without formally amending this Compact, the Parties may agree in writing, signed by the Principal Representatives, to modify any Annex to this Compact to (i) suspend, terminate or modify any project described in Annex I (each, a ''*Project*'' and collectively, the ''*Projects*'') or to create a new project, (ii) change the designations and allocations of funds among the Projects, the Project activities, or any activity under Program administration or monitoring and evaluation, or between a Project identified as of the entry into force of this Compact and a new project, or (iii) add, delete or waive any condition precedent described in Annex IV, or (iv) amend the MCA-Namibia Procurement Rules, *provided that* any such modification (1) is consistent in all material respects with the Program Objective, (2) does not cause the amount of Program Funding to exceed the aggregate amount specified in Section 2.1 of this Compact (as may be modified by operation of Section 2.2(e) of this Compact), (3) does not cause the amount of Compact Implementation Funding to exceed the aggregate amount specified in Section 2.2(a) of this Compact, (4) does not cause Namibia's responsibilities or contribution of resources to be less than specified in this Compact, (5) does not extend the Compact Term and (6) in the case of a

modification to change the designations or allocations of funds among Projects, does not materially adversely affect any activity under Program administration or monitoring and evaluation.

(c) Any modification of any annex to this Compact or to any other provision of this Compact pursuant to this Section 6.2 shall be binding on Namibia without the need for further ratification by Namibia, any further parliamentary action, or satisfaction of any additional domestic requirements of Namibia.

Section 6.3 Inconsistencies

In the event of any conflict or inconsistency between:

(a) any annex to this Compact and any of Articles 1 through 7, such Articles 1 through 7 will prevail; or

(b) this Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.4 Governing Law

This Compact is an international agreement and as such is governed by the principles of international law.

Section 6.5 Additional Instruments

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by, existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Web Site

Any reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

Section 6.7 References to Laws, Regulations, Policies and Guidelines

Each reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline or similar document will be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended, revised, replaced, or extended and will include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline or similar document.

Section 6.8 MCC Status

MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Compact. MCC and the United States Government have no liability under this Compact, the Program Implementation Agreement or any supplemental agreement, are immune from any action or proceeding arising under or relating to any of the foregoing documents, and Namibia hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, the Program Implementation Agreement, or any supplemental agreement, neither MCC nor the United States Government will be subject to the jurisdiction of the courts or any other body of Namibia.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

Before this Compact enters into force, Namibia will take all necessary steps to ensure that immediately upon this Compact entering into force, (a) this Compact and the PIA and all of the provisions of this Compact and the PIA are valid and binding and are in full force and effect in Namibia, (b) this Compact, the PIA and any other agreement entered into in connection with this Compact to which Namibia and MCC are parties (if so stipulated therein) are international agreements, and (c) no laws of Namibia (other than the constitution of Namibia), whether now or hereafter in effect, will take precedence or prevail over the terms of this Compact or the PIA.

Section 7.2 Conditions Precedent to Entry Into Force

This Compact will not enter into force unless and until each of the following conditions have been satisfied:

(a) The PIA must have been executed by the parties thereto and have become effective;

(b) Namibia must have delivered to MCC:

(i) A certificate signed and dated by the Principal Representative of Namibia, or such other duly authorized representative of Namibia acceptable to MCC, certifying that Namibia has satisfied the requirements of Section 7.1;

(ii) A legal opinion from the Attorney General of Namibia (or other entity acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) A certified copy of the Instrument of Ratification evidencing the ratification of this Compact by Namibia, which MCC may post on its Web site or otherwise make publicly available; and

(c) MCC must determine that after signature of this Compact, Namibia has not engaged in any action or omission that is inconsistent with the eligibility criteria for MCC Funding.

Section 7.3 Date of Entry Into Force

This Compact will enter into force on the later of (a) the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact and (b) the date that all conditions set forth in Section 7.2 have been satisfied.

Section 7.4 Compact Term

This Compact will remain in force for five years after its entry into force, unless terminated earlier under Section 5.1 (the ''*Compact Term*'').

Section 7.5 Provisional Application

Upon signature of this Compact and ratification by Namibia of this Compact and until it has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact, *provided that* no MCC Funding, other than Compact Implementation Funding, will be made available or disbursed before this Compact enters into force.

In Witness Whereof, the undersigned, duly authorized, have signed this Compact this 28th day of July, 2008.

Done at Windhoek, Namibia.

For Millennium Challenge Corporation, on behalf of the United States of America, *Name:* Rodney G. Bent, *Title:* Deputy Chief Executive Officer.

For the Republic of Namibia, *Name:* Professor Peter H. Katjavivi, *Title:* Director-General, National Planning Commission.

Annex I Program Description

A. Program Overview

This Annex I describes the Program that MCC Funding will support in Namibia during the Compact Term.

1. Background and Consultative Process

(a) Background.

Namibia, a large and sparsely populated country on Africa's southwest coast, has a population of approximately 2.1 million. It gained independence in 1990 after a century of foreign domination, including a period of half a century of apartheid. While the country has experienced steady economic growth since achieving

independence,[1] as a consequence of its history, approximately 27 percent [2] of its population lives in poverty (particularly in the northern communal areas or ''*NCAs*''), and in 2006 its per capita income was just US$3,000.[3] Additionally, the distribution of wealth and income within the country is highly unequal.[4] Unemployment is high (approximately 30 percent in 2006) and the HIV prevalence rate is more than 19 percent.[5] Despite facing such seemingly daunting obstacles to improving its social and economic conditions, Namibia is committed to providing equal opportunity to previously disadvantaged populations, while maintaining political and economic stability.

The Compact Goal is to reduce poverty through economic growth in Namibia. One of the ways to achieve such poverty reduction in Namibia is to create a skilled and educated labor force. Another way is to expand and diversify the economy's export base, which is currently narrowly focused on mineral commodities, by supporting sectors such as livestock, indigenous natural products and tourism. The Program will focus on improving the quality of education and training for underserved populations, and attempt to capitalize on Namibia's comparative advantages, namely large areas of semi-arid communal land suitable for livestock grazing, natural products indigenous to Namibia, and diverse wildlife and unique landscapes ideal for ecotourism. This approach is expected to have the greatest impact on alleviating poverty.

(b) Consultative Process.

In connection with its proposal for this Compact, Namibia undertook an extensive consultative process. Namibia held consultations in all 13 regions of the country and began national level consultations in mid-2006, which have been on-going particularly in those sectors that the Program will support. Participating stakeholders included government officials at central and regional levels, local authority councilors and stakeholders, regional coordination committees, regional AIDS committees, regional emergency units, communal land boards (''*CLB*s''), farmers' associations, conservancy groups, women's associations, church groups, youth groups, vulnerable members of society, non-governmental organizations (NGOs), community based organizations, and the private sector.

Worthy of note is the fact that the consultative process did not reveal a major divergence between the issues identified at national and regional levels. This appears to confirm that, in general, there is consensus within Namibia on priorities for economic growth. This consensus was built on previous consultative processes for Vision 2030,[6] the 5-year National Development Plans, Participatory Poverty Assessments and other sector-level consultations. MCA-Namibia, in close consultation and cooperation with the stakeholders for each of the Program's components, will continue to consult and inform Namibians country-wide on this Compact to ensure broad-based understanding, appreciation, commitment, and ownership of the proposed investments.

2. Description of Program and Beneficiaries [7]

The Program, whose objective is to increase the knowledge, skills and competence of the Namibian workforce, and to increase the productivity of agricultural and non-agricultural enterprises in communal areas, consists of three Projects: the Education Project, the Tourism Project and the Agriculture Project. Each Project (the details of which are set forth below) is designed to help address Namibia's constraints to economic growth and lead to sustainable poverty reduction. Specifically, the Education Project aims to increase skilled labor by helping to create a more efficient and effective educational system that will benefit approximately 1,000,000 young people, and ultimately increase employment opportunities. The Tourism Project will stimulate investment and income generation in poor, rural communities through increasing the income for an estimated 23,000 tourism-related employees and benefitting over 100,000 individuals living in conservancies. Lastly, the Agriculture Project will improve productivity in the livestock and INP sectors, and contribute to enhanced household incomes for over 400,000 Namibians.

Specific anticipated results of the Program over a twenty-year period include:

(a) A higher quality of education for approximately one million primary and secondary school learners across Namibia from an improved delivery system for textbooks;

(b) Access to financing for tertiary education for at least 60 percent of all qualifying applicants demonstrating financial need;

(c) Training of up to 49,000 low-income individuals who are either unemployed and/or unskilled at the Community Skills and Development Centers (''COSDECs'');

(d) Training in the tourism sector for more than 2,600 additional trainees and training in other high-priority vocational areas (to be further indentified) for additional students under an improved capacity for market-relevant training in the competitive grants program;

(e) A higher quality of education for approximately 41,700 students, primarily in rural communities, and which is expected to result in higher lifetime income for these students due to the proposed investments in the targeted primary and secondary schools;

(f) An increase in tourism by an estimated 4,000 additional overseas tourists per year as a result of marketing activities, resulting in an incremental present added value by these tourists of approximately US$7 million;

(g) Increased employment income for over 7,000 individuals due to enhanced investment in conservancies;

(h) Increased tourism visits and value added to the Namibian economy resulting from investments in Etosha National Park;

(i) Either increased employment, wages or household income for an estimated 23,000 people as a result of the Tourism Project;

(j) Improved market efficiency, improved land tenure security, and more equitable access to land benefitting over 130,000 individuals;

(k) Increased income to approximately 1,800 farmers across 50 communities due to the rangeland management component; and

(l) Increased incomes for over 15,000 households as a result of the Indigenous Natural Products (''INP'') component of the Agriculture Project.

3. Environmental and Social Accountability

All of the Projects will be implemented in compliance with the

[1] According to the World Bank's ''International Bank for Reconstruction and Development Interim Strategy Note: An Engagement Framework for the Republic of Namibia for FY 08–09,'' April 25, 2007, Namibia has experienced an average of 4.3 percent economic growth per annum.

[2] *Ibid.*

[3] *Ibid.*

[4] According to International Monetary Fund report (''Namibia: 2007 Article IV Consultation—Staff Report; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Namibia,'' February 2008), Namibia has the second highest Gini coefficient in the world at 0.64.

[5] *http://www.unicef.org/infobycountry/namibia_statistics.html.*

[6] Launched by H.E. President Sam Nujoma, in June 2004, Vision 2030 is the Government's long-term national strategy for development ending in the year 2030.

[7] Figures in this section refer to MCC's economic and beneficiary analysis for a period of 20 years and refer to direct and indirect beneficiaries.

MCC Environmental Guidelines, MCC's guidance on the integration of gender in Program implementation delivered by MCC to Namibia or posted on the MCC Web site (the ''*MCC Gender Policy*'') and the World Bank's Operational Policy on Involuntary Resettlement in effect as of July 2007 (''*OP 4.12*''). Namibia will also ensure that the Projects comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. Namibia will: (a) Undertake and complete any strategic environmental (and social) assessments (''*SEA*''), environmental impact assessments (''*EIA*''), environmental assessments (''*EA*''), environmental management plans (''*EMP*'') and resettlement action plans (''*RAP*''), in form and substance satisfactory to MCC, and as required under the laws of Namibia, the MCC Environmental Guidelines, this Compact, the Program Implementation Agreement or other supplement agreement or as otherwise required by MCC; (b) implement to MCC's satisfaction environmental and social mitigation measures identified in such assessments or plans; and (c) commit to fund environmental mitigation, (including costs of resettlement) in excess of MCC Funding not specifically provided for in the budget for any Project.

Description of Projects

Set forth below is a description of each of the Projects that Namibia will implement, or cause to be implemented, using MCC Funding to advance the applicable Project Objective. In addition, specific activities that will be undertaken within each Project (each, an ''*Activity*''), including sub-activities, are also described.

B. Education Project

1. Summary of Project and Activities

MCC Funding will be used to improve the effectiveness, efficiency and quality of Namibia's education sector through systemic reforms and critical near-term interventions that are consistent with the objectives of Namibia's ETSIP Program (the ''*Education Project*''). ETSIP is Namibia's 15-year sector-wide Education and Training Sector Improvement Program, whose mission is to create a knowledge-based economy through increasing the effectiveness, efficiency and quality of Namibia's education and training system. Specifically, MCC Funding will support key gaps within ETSIP, as well as fund complementary measures, such as institutional strengthening, policy reform and targeted technical assistance to ensure sustainable results.

The Activities that will be undertaken in furtherance of the Education Project are:

(a) Improving the Quality of Education (the ''*Education Quality Activity*''): This Activity involves the rehabilitation and renovation of infrastructure (including teacher housing) and equipment in approximately 47 primary and secondary schools, and the funding of training programs for school administrators and teachers. Additionally, this Activity includes funding for policy-relevant studies and improvements in science and computer training facilities at teacher training colleges. To reinforce Activity outcomes, Namibia will implement teacher education reform guidelines.

(b) Improving Vocational and Skills Training (the ''*Vocational and Skills Training Activity*''): With MCC Funding, the Vocational and Skills Training Activity will assist with the establishment of a National Training Fund (''*NTF*'') within the Namibia Training Authority (''*NTA*''). MCC Funding will be used for the provision of technical assistance for the NTF and the creation of a training levy system that will sustain the NTF in the future. MCC Funding will also support priority vocational and skills training areas (including but not limited to tourism) selected under criteria developed by the NTA, which criteria will be employed through a competitive grants program to be implemented under this Activity. Namibia and MCA-Namibia commit to achieving satisfactory progress during the implementation of MCC supported training toward the effective operation of the NTF, which will include: possessing a proper governance structure (including the appointment of the NTA Board and the standing councils and committees), the adoption of selection criteria for the award of grants, the creation and implementation of the final sustainable levy structure, and the deployment of NTF funding so that public entities will not be privileged to the detriment of funding for private entities engaged in training. Finally, the NTF will operate on a sustainable basis and provide funding on a needs basis. MCC Funding will also be utilized (a) for the construction or renovation of approximately nine COSDECs, and (b) to support efforts so that the private-training industry responds to the training demands of Namibia's market economy.

(c) Improving Access to and Management of Textbooks (the ''*Textbook Activity*''): This Activity will focus on expanding access to and improving the distribution and management of textbooks within primary and secondary schools through operational support and reforms in the textbook acquisition process designed to make the process more transparent and competitive. This Activity will include funding for the acquisition of science, math and English textbooks for grades 5—12 on a national level and improving classroom use of textbooks. These acquisitions will be conducted in two phases. The first phase will fill actual gaps as determined by a textbook baseline study. The second phase will support a pilot procurement program aimed at improving textbook acquisition once MCC is satisfied that the supporting documentation (implementation plan for the 2008 Textbook Policy) is complied with such that there is a greater transparency and accountability in the acquisition, distribution and storage of textbooks. A system for monitoring textbook supply and demand will also be implemented.

(d) Investing in Regional Study and Resource Centers (the ''*RSRC Activity*''): This Activity will fund the construction of approximately three regional study and resource centers (''*RSRCs*'') in underserved areas that will improve community access to documentation, information resources, training materials and programs, as well as study facilities. Additionally, technical assistance and training will be provided for RSRC staff. Namibia will ensure that the MCC constructed RSRCs will offer expanded hours of operation with both day and evening hours as provided for by the 1997 ''Information for Self-Reliance and Development: A Policy Framework for Libraries and Allied Information Agencies for Namibia.'' These extra hours will meet the needs of both students and individuals that work during the day.

(e) Expanding and Improving Access to, Equity, and Sustainability of Tertiary Education Finance (the ''*Tertiary Education Finance Activity*''): This Activity's focus is expanding access to tertiary finance. This will be achieved by providing technical assistance to the Ministry of Education (''*MoE*'') to support its efforts to establish a sustainable and widely accessible tertiary and technical education finance system, including, *inter alia*, improved loan and recovery rates and targeting of financing subsidies to those in need.

(f) Cross-Project Support: To further support the Activities of this Project, MCC Funding will also be used to strengthen the HIV/AIDS program within the MoE HIV/AIDS Management Unit, including development of HIV/

AIDS awareness and prevention plans related to construction activities.

2. Beneficiaries [8]

Beneficiaries of the Education Quality Activity are primarily students of the target schools, where 47 percent of beneficiary students are estimated to live in households with consumption of less than US$2 per day per person. The target schools currently enroll approximately 18,400 students. Over the course of 20 years, the schools will educate an estimated 41,700 primary and secondary students. In addition, roughly a third of the teachers at the 47 schools receiving teacher housing will realize a marked improvement in living conditions. Overall, males and females will be exposed to the new schools in equal proportion. Namibia has generally achieved gender parity within its school system, although there are some differences between regions and some school phases.

Based on MCA–N forecasts, the RSRCs would serve at least 8,000 individuals a year (about 10 percent of population of the towns where the centers are located). There are over 120,000 learners within regional reach of the centers who could benefit from the mobile services provided from the centers and from visits to the centers. These centers will be located in the principal towns of relatively poor and under-served regions.

Beneficiaries of the COSDECs tend to be unskilled and/or unemployed individuals, and program benefits are projected to benefit up to 2,800 COSDEC trainees per year (or 49,000 over 20 years).

The Textbook Activity will benefit the poorer segments of the student population. The current need for textbooks is relatively higher at schools in poor communities, since wealthier communities tend to have better-financed and resourced schools.

The Tertiary Education Finance Activity will help Namibia to achieve a reduction in defaults and an increase in the number of qualified but disadvantaged individuals accessing loans and obtaining tertiary education. The assistance will enable better targeting of public funds to the most disadvantaged students, rather than those with the ability to pay. Better cost recovery will also allow reduced direct public spending on tertiary education loans.

3. Sustainability

In acknowledgement of the financial commitment required to address essential maintenance needs of general schools, the MoE has embarked on a major program of periodic maintenance and renovations for these schools. A 2005 MoE policy directive has stipulated that 25 percent of its development budget is set aside each year for maintenance (instead of spending that portion on new construction), which is significantly above the Ministry of Works recommended allocation of 5 percent. Further, through ETSIP funds, MoE has committed to allocating a set percentage towards school hostel maintenance.

At the local level, the MoE has also initiated a pilot program of funding individual ''School Development Funds'' on a revolving basis, which currently reaches an estimated 150 schools (or nearly 10 percent of the school network). This program involves delegation of authority to schools to undertake minor repairs, as a means of removing responsibility for such activities from the Regional Education and Ministry of Works' offices. To support effective use of the School Development Funds, the MoE has begun to require that each school prepare and submit three-year rolling maintenance plans.

Additionally, in light of the increasing expenditures for utilities at the school level, the MoE has begun to further involve school principals in the flow of information regarding costs and billing, and has also introduced pilot programs in which schools are assuming greater responsibility for certain recurring expenses.

In establishing ETSIP, Namibia has demonstrated a commitment to undertaking substantial policy and institutional changes to catalyze key improvements in the quality of Namibian education. Specifically, Namibia has supported the efforts of the MoE to develop and implement new policies, procedures, and guidelines affecting the delivery of pre-primary to secondary education. Prominent institutional changes that are being enacted by MoE are presented below. In addition, to provide further support to the MoE in their long-term reform efforts, the MCC will fund targeted training and technical assistance with key institutional changes and policy implementation processes.

4. Environmental and Social Mitigation Measures

The Education Project is categorized under MCC's Environmental Guidelines as a Category B Project due to the environmental and social impacts that will result from certain activities.[9] EAs and EMPs will be developed to assess the environmental and social impacts of the construction activities within the Education Quality, Vocational and Skills Training, and RSRCs Activities. Any resettlement impacts resulting from the Education Project will be identified and documented in compliance with OP 4.12.

The Education Quality Activity will include the implementation of a general hygiene program at schools, which will be implemented by MoE. Furthermore, under the Education Quality Activity, disability access will be provided at the 47 general schools, which will reinforce the existing MoE requirement for disability access in all new school buildings. The Education Quality Activity will also benefit vulnerable groups in Namibia, such as the San people.

The MoE HIV/AIDS Management Unit (''HAMU'') will receive targeted management strengthening support, which will include activities intended to mainstream HIV/AIDS education and training across all MoE directorates, associated institutions, and planning activities. The technical advisor working with HAMU will also develop and implement HIV/AIDS awareness and prevention plans for school populations and communities where each educational facility is located for the Education Quality, Vocational and Skills Training, and RSRCs Activities.

5. Donor Coordination

The first phase for the implementation of ETSIP (2006–2013) has been programmed in detail. Through ETSIP, Namibia coordinates donors to participate in a sector-wide program mainly through budget support and extra-budgetary support, and the Activities of the Education Project are drawn from this program. Namibia's pledged contribution to this plan includes US$162 million over 2006–2020, or approximately US$13 million annually.

The Education Project will focus on certain aspects within ETSIP in order to complement the implementation of the overall sector program, and MCC has coordinated closely with the lead development partners in this effort, namely the World Bank and EU. With respect to other ETSIP development partners (who fund major projects rather

[8] Figures in this section are based on MCC's economic and beneficiary analysis and are over a 20-year period.

[9] No environmental or social assessment or management planning is required under MCC's Environmental Guidelines for the Textbook Activity or the Tertiary Education Finance Activity.

than provide general budget support), MCC has discussed project activities with USAID, PEPFAR, Finland, Sweden, Norway, KfW of Germany, and Luxembourg. For the NTF, MCC is cooperating specifically with the Luxembourg Development Agency.

6. USAID

As a member of ETSIP, MCC and MCA-Namibia have had ongoing discussions with USAID in the development of this Compact.

7. Policy, Legal and Regulatory Reforms

As noted above, Namibia's establishment of a fifteen-year national reform program for the education sector demonstrates a commitment to undertake substantial policy and institutional changes to catalyze key improvements in the quality of Namibian education and skills development. Specifically, Namibia has supported the efforts of the MoE to develop and implement new policies, procedures, and guidelines affecting the delivery of primary to secondary education. In addition, to provide further support to the MoE in their long-term reform efforts, MCC Funding will support targeted training and technical assistance with key institutional changes and policy implementation processes.

With respect to sector-specific policy reform commitments, Namibia has made several notable advancements in education, encompassing:

- Enactment of the National Training Fund within the NTA under the Vocational Education and Training (''*VET*'') Act of 2008;
- Establishing and staffing the NTA as provided for in the VET Act;
- Approval of a new National Textbook Policy and implementation plan for primary and secondary schools (2008); and
- Adoption of policies concerning the Colleges of Education to allow for their semi-autonomy and introduction of performance-based contracts.

In addition, Namibia will implement reforms at the teacher training colleges aimed at: (a) Improving and adapting curriculum; (b) setting fees and charges; (c) establishing policies and procedures to raise outside funds; (d) setting admissions standards; (e) improving screening of teacher applicants; and (f) improving management and maintenance of facilities.

C. Tourism Project

1. Summary of Project and Activities

Consistent with Namibia's national development strategies and in support of reform efforts already underway, MCC Funding will support three priority Activities in the tourism sector (the ''*Tourism Project*''): (a) Improve the management and infrastructure of Etosha National Park (''*ENP*''); (b) enhance the marketing of Namibian tourism; and, (c) develop the capacity of communal conservancies to attract investments in ecotourism and capture a greater share of the revenue generated by tourism in Namibia. Together, these Activities will generate income and create employment opportunities for some of the poorest populations in Namibia, while conserving the natural resources that serve as the foundation for the tourism industry.

The Activities that will be undertaken in furtherance of the Tourism Project are:

(a) Improved Management and Infrastructure of Etosha National Park (the ''*ENP Activity*''): This Activity aims to improve the management capacity of ENP, promote private sector investment in and around Namibia's national parks, increase tourism revenue nationally, and benefit rural communal conservancies. Achieving these goals requires improving budget control and management of the park and increasing private sector investment in joint-venture lodges around ENP and joint-venture lodges and services within and near other national parks, among other things (collectively, the ''*Performance Targets*''). MCC Funding will support technical assistance in support of improved management and a study of tourism carrying capacity and potential tourism investments in and around ENP and other national parks in the north, as well as investments in infrastructure for management centers and staff housing, road building and maintenance and the purchase of game translocation equipment.

(b) Marketing Namibian Tourism (the ''*Marketing Activity*''): The Marketing Activity's aim is to increase tourist arrivals to Namibia by expanding marketing to North American tourists, developing and marketing local and regional tourism route packages, and developing a fully interactive Web site. The development and marketing of local and regional tourism route packages will focus on conservancy sites with the explicit aim of directing anticipated increases in tourism visitors to communal areas. MCC Funding will provide financing to support these goals.

(c) Ecotourism Development in Conservancies (the ''*Conservancy Support Activity*''): MCC Funding under this Activity will assist Namibia in building conservancy capacity to protect its natural resources, attract investment, and achieve financial sustainability so that households in communal conservancy areas (or conservancies) can receive a greater share of revenues. Based on individual conservancy needs and demands, the Activity will provide a range of technical assistance services and grant funding to approximately 31 high-tourism potential conservancies. Such assistance and funding will help to mitigate existing barriers to tourism enterprise investment and help render the conservancies financially self-sustainable. In addition, grant funding to promote joint-venture tourism enterprises between conservancies and the private sector will be provided to a subset of approximately 15 of the 31 conservancies.

2. Beneficiaries

The main benefits of the Tourism Project accrue through increased tourism visits and value added to the Namibian economy. It is estimated that the Marketing Activity will result in an additional 4,000 tourists per year on average, which translates into an incremental (present) value added by overseas tourists of approximately US$7 million (MCC calculations based on data provided by National Tourism Board and 2004 parks valuation study by Turpie *et al.* 2004).

The distribution of benefits will track the general distribution of income in Namibia, meaning approximately 23 percent of benefits will accrue to the poor (source: MET July 2006). Primary benefit streams of this Project include increased employment income, conservancy income (to be reinvested or distributed to members), profits to joint venture partners, and increased wildlife populations. There are 118,000 residents within the approximate 31 conservancies targeted for support. A projected 7,000 individuals are to enjoy significantly higher income as a result of full and part time employment generated through this Project (MCC projection based upon 2007 conservancy data). The other 111,000 conservancy residents are expected to receive benefits through small dividends or community-sponsored projects.

3. Sustainability

In 2007 Etosha National Park earned revenues of approximately US$3 million, mostly generated through daily usage fees collected at entry gates. This revenue goes directly to the Ministry of Finance (''*MoF*'') which then allocates approximately US$2.25 million back to the park to cover operating costs. MoF retains about US$100,000 with the

remaining US$650,000 going into a collective Game Products Trust Fund available to the national parks network. ENP is currently allocating a disproportionately high percentage of its total operating budget to staff and transport costs. The Tourism Project will assist ENP in achieving a more balanced budget through growth in park visitors, an increase in park usage fees, and concessions awarded to the private sector. In addition, delegating more authority to ENP to manage its own budget should increase revenue and productivity. Further, use of MCC Funding for the ENP Activity will be contingent upon meeting the applicable performance targets which include the development of an integrated master plan for maintenance of all infrastructure and equipment within ENP and demonstration of sufficient budget to implement the plan.

The NTB receives an annual budget allocation of approximately US$3.5 million and an additional US$1.5 million in revenue collected through a 2 percent bed night levy charged for all overnight stays in hotels or lodges. The Tourism Project, which is expected to increase tourist arrivals through enhanced tourism marketing, will likely result in an increase of revenue to NTB as bed night levies increase.

Financial sustainability of conservancies is a primary objective of this Project as it will aim to develop the capacity of conservancies to attract private sector investment and receive a greater share of the tourism generated revenues. In 2007, benefits amounted to more than US$1.68 million in gross revenues and US$1.26 million in wage income, 66 percent of which were directly derived from tourism enterprises and represent a substantial increase in the period since 1994.

4. Environmental and Social Mitigation Measures

The Tourism Project is categorized under MCC's Environmental Guidelines as a Category A project due to potential site-specific environmental and social impacts in sensitive areas anticipated from the construction of management centers in fragile ecosystems and in an area that is the traditional homeland to vulnerable ethnic groups. Tourism activities supported by the independent fund established under the Conservancy Support Activity will be classified as a Category D Activity under MCC's Environmental Guidelines.

To ensure the environmental sustainability of the Tourism Project and mitigate any environmental and social impacts, an (EIA) and site-specific EMP will be developed for the construction and rehabilitation of management centers in ENP. EMPs will include actions to limit or mitigate impacts of construction on fragile ecosystems within ENP, ensure proper waste management, and prevent the spread of invasive species. HIV/AIDS awareness and prevention programs for ENP staff and construction contractors will also be developed and implemented. Any resettlement impacts resulting from the Tourism Project will be identified and documented in compliance with OP 4.12. MET will provide alternative housing for the indigenous San peoples at Government-funded official park employee housing sites or on lands transferred to the San prior to any eviction and/or demolition of their existing housing at Okakuejo. Transportation to the primary school at Ombika will be provided for the children of ENP staff living at Okakuejo.

MCC Funding that supports grants to conservancies will comply with MCC's Environmental Guidelines. Additionally, signed contracts between communal conservancies and investors will include benefits sharing and employment guarantees. Periodic and random audits of the performance of a subset of grant funding recipients will be conducted to ensure compliance with both MCC Environmental Guidelines and Namibian environmental requirements. Furthermore, targeted training to ensure that women and vulnerable groups have access to revenue-generating opportunities will be included as part of the overall Conservancy Support Activity. Disbursement of grant funds for wildlife relocation or joint venture activities on conservancy or national park lands and all activities supported by these funds shall comply with MCC's Environmental Guidelines, whose terms shall also be included in any manual produced for the distribution of such grant funds.

5. Donor Coordination

Multiple donors, most notably KfW, GTZ and UNDP have provided technical assistance and funding for the infrastructure and capacity building needs of the national parks. UNDP through its ''Strengthening the Protected Areas Network'' (''*SPAN*'') Project, aims to improve management effectiveness of Namibia's national system of protected areas and includes the development of the new Concession Policy (approved by Namibia in 2007), support to make this policy operational and support for financial transformation of park management. These activities will complement efforts to support and accelerate management reform of ENP. MCC's technical assessment of the staff housing centers was based on concept designs funded by UNDP. MCA-Namibia will coordinate efforts with UNDP's SPAN Project and will work with MET to implement the ENP Activity.

Multiple donors over the past ten years have provided technical assistance to conservancies in building governance, sustainable natural resource management, and tourism potential of existing and newly-formed conservancies. The most important donor assistance has come from USAID (through the recently completed LIFE–PLUS Project); the World Wildlife Fund for Nature; the Swedish International Development Agency (SIDA); Department for International Development (DFID); Danish International Development Agency (DANIDA); and the World Bank (through the Integrated Community-Based Ecosystem Management (ICEMA) Project). The Conservancy Support Activity will build on this previous work and benefit from the capacity and experience that has been developed. This Activity will also support joint ventures on conservancies complementing current efforts by the ICEMA Project.

6. USAID

USAID has been a key donor in community-based natural resources management programs in Namibia. This Compact will build on the USAID-funded LIFE PLUS project which includes a focus on conservancy support.

7. Policy, Legal and Regulatory Reforms

The Tourism Project aims to support and accelerate MET reforms in the management of Namibia's national park system. A portion of MCC Funding to support the ENP Activity will be contingent on meeting the applicable performance targets, which focus on management reforms of ENP in order to improve management. The Tourism Project will also provide technical assistance to support MET's efforts to meet these performance targets.

Namibia recently passed legislation to increase the bed night levy to 2 percent, which creates a sustainable mechanism for continued funding to NTB, especially as tourist arrivals grow. As tourism in Namibia grows, the returns from investments by the private sector will also grow and allow the private sector to play a greater role in marketing Namibian tourism products.

To facilitate implementation of the Conservancy Support Activity, Namibia will expedite the consideration and

approval of leasehold applications submitted by conservancies under this Activity.

With respect to sector-specific policy reform commitments, Namibia has made several recent notable advancements in tourism, encompassing:

- Adoption of the Ministry of Environment and Tourism's Strategic Plan that establishes objectives and targets for the tourism sector in Namibia;
- Adoption of Etosha National Park Management Plan and Business Plan that establishes objectives and targets for ENP;
- Passage of the Environmental Management Bill into law establishing mandatory environmental review and mitigation procedures in Namibia (2007); and
- Policy on Tourism and Wildlife Concessions on State Land (2007).

D. Agriculture Project

1. Summary of Project and Activities

MCC Funding will support investments aimed at achieving a sustainable increase in the economic performance of the agricultural sector (the ''*Agriculture Project*''). Included in this Project are Activities that strengthen the land tenure system in the NCAs, introduce improved rangeland management practices, and strengthen animal health services, regulatory capacity, and livestock marketing efficiencies, all of which are expected to increase productivity and profitability of livestock production and sale. In addition, the Project will increase the volume, quality and value-added of INPs for export to regional and international markets.

The Activities to be undertaken in furtherance of the Agriculture Project are:

(a) Land Access and Management (''*Land Access and Management Activity*''): This Activity includes two sub-activities, one which focuses on improving the communal land regime (the ''*Communal Land Support Activity*'') and the second which focuses on introducing effective community-based rangeland management practices (the ''*CBLRM Activity*'').

Under the Communal Land Support Activity, MCC will fund: a comprehensive public awareness and outreach campaign to educate the public regarding their land rights; the streamlining of administrative procedures; a systematic verification and registration process that will result in the formalization of land rights in the NCAs; and capacity building for Communal Land Boards and other land administration institutions.

The CBLRM Activity aims to improve livestock quality and value by supporting training in community-based management of rangeland resources, herd management, and business management skills, including specific outreach to women in small ruminant production and marketing, among participating communities. In addition, these communities will be eligible to receive limited rangeland management infrastructure (*e.g.* water points, kraals) to support community rangeland management plans.

(b) Livestock Support (the ''*Livestock Support Activity*''): This Activity involves: (i) Construction of approximately five veterinary centers in the NCA and underserved areas, and rehabilitation of two quarantine camps in the Caprivi region; (ii) implementation of a traceability system to better meet the food safety requirements in local and external markets; and (iii) establishment of a fund to invest in post-farmgate improvements fostering greater efficiencies in livestock marketing, transport, and quarantine (the ''*Livestock Market Efficiency Fund*''). The Livestock Market Efficiency Fund will also focus on diversifying market opportunities, including sanitary regulatory capacity building in the NCA. An operations manual will be developed by MCA-Namibia, and approved by MCC, which defines procedures, eligibility and selection criteria for the Livestock Market Efficiency Fund.

(c) Indigenous Natural Products (the ''*INP Activity*''): The INP Activity's goal is to increase the volume, quality, and value addition of the natural products that Primary Producer Organizations (''*PPOs*'') collect and harvest, and to advance their operational and business capacity. In addition, this Activity will improve market information to PPO's, provide capacity building for the Indigenous Plant Task Team (''*IPTT*'') and support the formulation of regulations, policies and implementation plans to ensure the protection of indigenous knowledge. MCA-Namibia will develop, subject to MCC approval, a grants-making manual that will guide the review, selection and approval process of grants to PPOs. This Activity includes a fund to support research, testing and application of new innovations and services critical to the INP industry's immediate, short-term and long-term competitiveness (the ''*INP Innovation Fund*''). MCA-Namibia will develop, subject to MCC approval, an operations manual to guide the management of the INP Innovation Fund.

2. Beneficiaries

Direct and indirect beneficiaries of the Livestock Support and the Communal Land Support Activities are estimated at 135,000. In addition, over 24,000 households will benefit from improved veterinary services, and an estimated 1,800 households across 50 communities are anticipated to benefit from the rangeland management program.

The INP Activity is expected to increase income for up to 15,000 primary producers, a majority of whom are poor and female and for whom small increases in cash income are important supplementary household income for up to 75,000 individuals.

3. Sustainability

The Land Access and Management Activity will directly support sustainability through the strengthening of structures and systems of land-related institutions that expedite land management processes at various levels of government. This includes access to basic information in the form of spatial data, topographic maps, and integrated information systems on land holdings that assist in decision-making, planning, and maintenance of proper registers of land rights. The institutional sustainability of the Communal Land Support Activity will depend upon the allocation of sufficient budgetary provisions and technically-skilled staff to the CLBs in the NCAs.

The veterinary service centers that will be constructed as part of the Livestock Support Activity are a public good which Namibia is committed to fully fund in terms of staff and operational costs. The Ministry of Agriculture's five-year budget plan provides for the financial needs of these five centers.

After the initial MCC-funded tagging exercise, the Livestock Traceability System will be a shared public-private cost whereby the GRN and cattle owners cover the costs of tags and operations of the information system. The GRN will cover the costs associated with information entry into the traceability database.

The sustainability of the Livestock Market Efficiency Improvement sub-activity will be achieved primarily by attracting and supporting successful private sector solutions. Some of these may not be sustained in the long term, but represent short-term measures that create incentives for farmers to overcome post-farmgate costs/losses. Potential long-term solutions include the establishment of more strategic market infrastructure in conjunction

with the private sector and/or public sector.

The sustainability of the INP Activity is enhanced by the business capacities that are developed among the PPO clients, SME processors, traders, IPTT and the linkages they make with global buyers of raw, semi-processed and finished INPs. Significant economic growth opportunities for the Namibian INP industry have been documented by both researchers and private firms.

4. Environmental and Social Mitigation Measures

The Agriculture Project is categorized under MCC's Environmental Guidelines as a Category B Project due to potential site-specific environmental and social impacts anticipated to result from land use management decisions, the construction and operation of veterinary centers and rehabilitation of quarantine camps. The Livestock Market Efficiency Fund, which involves an intermediate funding facility, is categorized under MCC's Environmental Guidelines as a Category D Activity. The INP Activity is categorized under MCC's Environmental Guidelines as a Category A Activity due to potentially significant environmental impacts anticipated to result from increased harvesting, utilization and export of species listed for protection under the Convention on the International Trade of Endangered Species (''CITES'').

The Land Access and Management Activity will involve the development of EAs and EMPs to mitigate any adverse impacts. Participatory community-level decision making processes will further mitigate against adverse impacts. The Livestock Support Activity will involve an EA to analyze the environmental and social impacts of the veterinary centers, quarantine camps, and livestock marketing facilities and include the development of site-specific EMPs. The EMPs will define the regulations and specific training needed to govern the use of Restricted Use Pesticides and other substances in compliance with Namibia's Environmental Management Act and MCC Environmental Guidelines. Any post-farmgate infrastructure built through the Livestock Market Efficiency Improvement sub-activity will involve the application of environmental screening and siting criteria and periodic audits of the performance of infrastructure funding recipients. The INP Activity will involve an EIA and an EMP to identify impacts and develop appropriate mitigation measures. These measures will address any potential environmental impacts that could result from the harvesting, utilization and export of species listed for protection under CITES.

Any resettlement impacts resulting from the Agriculture Project will be identified and documented in compliance with OP 4.12. In particular, the Land Access and Management Activity will clarify procedures to ensure that community decision making regarding restricting access to land includes measures to mitigate adverse impacts on livelihoods. HIV/AIDS awareness and prevention plans will be developed under the Agriculture Project and implemented in relation to construction activities. Furthermore, trafficking in persons for livestock-related labor under the Livestock Support Activity will need to be addressed through the development and implementation of anti-trafficking measures. Gender integration plans will be developed to provide design recommendations and to ensure women's participation throughout implementation for all Activities with a particular focus on including women in land and natural resources management decision making. The Livestock Market Efficiency Fund and the INP Innovation Fund will comply with MCC's Environmental Guidelines, whose terms will be included in the grants-making manuals. Increased demand for INPs is likely to provide significant income benefits to female-headed households and vulnerable groups such as the San people.

5. Donor Coordination

The Activities of the Agriculture Project build on other donors' previous initiatives in the livestock and land management sub-sectors. The Livestock Activity will build upon previous and current donor support to improve livestock marketing by communal farmers. The Communal Land Support sub-activity will build upon other GRN and donor-funded land reform initiatives to ensure coordination and avoid duplication. Community-based Rangeland and Livestock Management sub-activities build upon several successful community-led solutions to natural resources management. Various donors have supported the commercialization of natural products, namely USAID, the EU, the GEF facility, the FAO, and Oxfam. Previous programs in this sector have largely targeted the upper end of the value chain, and MCC Funding will complement these efforts by working closely with the first-stage primary producers.

6. USAID

MCC Funding will build on USAID-funded projects in natural resources management, specifically the natural products sector.

7. Policy, Legal and Regulatory Reforms

Namibia has committed to adopt the ''Access to Genetic Resources and Associated Traditional Knowledge'' draft bill into law, which shall reflect, and not deviate in a significant manner from, the terms of CITES.

E. Implementation Framework

1. Overview

Namibia will generally implement the Program through its existing government systems. The National Planning Commission, a ministry-level government agency charged with directing development resources, has been confirmed as the designated accountable entity. As such, it will have overall responsibility for the oversight, management and implementation of the Program. A program implementation unit, within NPC will serve as the management unit and will be responsible for the day-to-day administration of this Compact. In addition, the Ministries of Education; Agriculture, Water and Forestry; Environment and Tourism; and Lands and Resettlement, and other governmental institutions, will undertake certain aspects of the implementation of specific Projects to ensure integration, coordination and sustainability of the MCC investments.

2. MCA-Namibia

(a) Board of Directors.

(i) Composition.

The NPC Commissioners serve as the MCA-Namibia Board of Directors. The Commission currently consists of 14 members, six of whom are ministers specified by the NPC's enabling statute, with the remaining members appointed by the President of Namibia. As the six specified ministers do not include representatives from the MoE or the MET, Namibia agrees that two of the appointed commission member slots will be filled with representatives from these ministries. In addition, Namibia has agreed that the remaining six appointed slots will be filled, as their current terms expire, with civil society and private sector representatives selected through a process that allows the private sector and civil society groups whose interests relate to the Projects to nominate potential candidates. The below ministries will be represented by the Minister or a

delegate no lower than the Permanent Secretary level:

- National Planning Commission (Chairperson is the Director General)
- Ministry of Agriculture, Water and Forestry
- Ministry of Finance
- Ministry of Trade and Industry
- Ministry of Works and Transport
- Ministry of Regional and Local Government, Housing and Rural Development
- Ministry of Education
- Ministry of Environment and Tourism

The existing appointees to the NPC Commission, as of the date hereof, are civil society and private sector members, selected by the President based on their expertise and the sectors they represent are listed below:

- Representative of the Namibia Chamber of Commerce and Industry
- Founder, Desert Research Foundation of Namibia (DRFN)
- Director of Primary Health Care, Ministry of Health and Social Services
- Deputy Director of Environmental Affairs, Ministry of Environment and Tourism
- President, National Union for Namibia Workers (NUNW)
- Secretary General, National Youth Council of Namibia
- Head of ETSIP, Ministry of Education
- CEO, Federation of Namibia Tourism Associations (FENATA)

Since there is an equal number of Board members, for voting purposes, the Director General will hold a tie-breaking vote.

(ii) Roles and Responsibilities. The roles and responsibilities of the MCA-Namibia Board will be as set forth in the bylaws of MCA-Namibia annexed to the Program Implementation Agreement (to the extent not inconsistent with the NPC Act).

(b) Management Unit.

(i) Composition.

Appointed by the Director General of the NPC, with MCC's approval, MCA-Namibia will be managed by a Chief Executive Officer (''CEO''). Senior management will also include the following officers: Two Deputy CEOs; Director of Administration and Finance; Project Directors for Education, Tourism and Agriculture; Environment and Social Assessment Director; Monitoring and Evaluation Director; Legal Advisor; and Procurement Manager. In addition to other standard operational staff, much of the technical expertise will come from the implementing entities. MCA-Namibia will support limited staff within the Ministry of Education, Ministry of Agriculture, Ministry of Environment and Tourism, and the Namibia Tourism Board, who will support Compact Activities while ensuring close integration with national priorities and strategies.

(ii) Roles and Responsibilities.

The roles and responsibilities of the Management Unit will be set forth in the bylaws of MCA-Namibia annexed to the Program Implementation Agreement.

3. Stakeholder/Consultative Committees

MCA-Namibia will rely on existing consultative mechanisms for each of the Projects. For the Education Project, this will be the ETSIP Programme Coordinating Committee and the NTA Board. For the Tourism Project, MCA-Namibia will consult with the Namibian Association for Conservancy Support Organisations (NACSO). For the Agriculture Project, consultations will be with the Technical Committee on Land and Social Issues, the Veterinary Cordon Fence (VCF) Task Force, farmers' organizations, and the Indigenous Plants Task Team (IPTT).

These committees include members from the public and private sectors and civil society. They are broad-based and offer relevant technical expertise plus a solid understanding of socio-economic and environmental realities in Namibia.

The MCA-Namibia Project Directors will present Program-related matters to these consultative bodies and report back to the MCA-Namibia Board on the advice provided by them. The committees may also pro-actively approach MCA-Namibia with their concerns related to the Program design and implementation. Regular, periodic interaction between MCA-Namibia and the consultative bodies is anticipated.

4. Implementing Entities

Subject to the terms and conditions of this Compact and any other supplemental agreement entered into in connection with this Compact, MCA-Namibia may engage one or more entities of Namibia to implement and carry out any Project or Activity (or a component thereof) to be carried out in furtherance of this Compact (each, an ''*Implementing Entity*''). Namibia will ensure that MCA-Namibia enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity, the MCA-Namibia officer to whom such Implementing Entity will report and other appropriate terms and conditions (each an ''*Implementing Entity Agreement*'').

5. Fiscal Agent

Unless MCC otherwise agrees in writing, Namibia will ensure that MCA-Namibia engages a fiscal agent (a ''Fiscal Agent''), who will be responsible for assisting MCA-Namibia with its fiscal management and assure appropriate fiscal accountability of MCC Funding, and whose duties will include those set forth in the Program Implementation Agreement.

6. Procurement Agent

Unless MCC otherwise agrees in writing, Namibia will ensure that MCA-Namibia engages one or more procurement agents (each, a ''*Procurement Agent*'') to carry out and certify specified procurement activities in furtherance of this Compact. The roles and responsibilities of each Procurement Agent will be set forth in the Program Implementation Agreement or such agreement as MCA-Namibia enters into with each Procurement Agent, which agreement shall be in form and substance satisfactory to MCC. Any Procurement Agent will adhere to the procurement standards set forth in the MCA-Namibia Procurement Rules and ensure procurements are consistent with the procurement plan adopted by MCA-Namibia pursuant to the Program Implementation Agreement, unless MCC otherwise agrees in writing.

Annex II Multi-Year Financial Plan Summary

This Annex II to this Compact (the ''*Financial Plan Annex*'') summarizes the Multi-Year Financial Plan for the Program.

1. General.

A multi-year financial plan summary (''*Multi-Year Financial Plan Summary*'') is attached hereto as Exhibit A. By such time as specified in the PIA, Namibia will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of estimated MCC Funding and Namibia's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact Term based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least thirty (30) days prior to the anniversary of the date on which this Compact enters into force, the Parties shall mutually agree in writing to a detailed budget for the upcoming year of the Program, which shall include a more detailed budget for such year, taking into account the status of the Program at such time and making any necessary

adjustments to the Multi-Year Financial Plan.

2. Government LMIC Contribution

During the Compact Term, Namibia shall make contributions, relative to its national budget and taking into account prevailing economic conditions, as are necessary to carry out Namibia's responsibilities and obligations under Section 2.6(a) of this Compact. These contributions may include in-kind and financial contributions (including obligations of Namibia on any debt incurred toward meeting these contribution obligations). In connection with this obligation Namibia has developed a budget over the five year term of the Compact to complement MCC Funding through budget allocations to its sectors in education, tourism and agriculture. Namibia anticipates making contributions from its national budget of approximately US$165,483,800 over the Compact Term. Such contribution shall be in addition to Namibia's spending allocated toward such Project Objectives in its budget for the year immediately preceding the establishment of this Compact. Namibia's contribution remains subject to any legal requirements in Namibia for the budgeting and appropriation of such contribution, including approval of Namibia's annual budget by its Parliament. The Parties may set forth in appropriate supplemental agreements certain requirements regarding this Government contribution, which requirements may be conditions precedent to the Disbursement of MCC Funding.

Exhibit A Multi-Year Financial Plan Summary

(US$)							
Component	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Education Project							
(a) Improving the Quality of General Education	5,775,732	3,842,838	15,629,051	30,725,468	17,086,640	3,797,031	76,856,760
(b) Vocational and Skills Training	1,393,045	1,673,534	5,980,430	11,552,609	7,643,114	928,697	29,171,429
(c) Improving Access to and Management of Textbooks	205,720	3,582,549	5,346,299	1,818,903	1,818,903	1,818,903	14,591,277
(d) Regional Study and Resource Centers	1,545,394	52,160	2,094,525	8,324,161	7,817,049	1,052,263	20,885,552
(f) Access to Tertiary Education Finance	-	838,940	632,583	632,565	-	-	2,104,088
(g) Cross-Project Support (HIV/AIDS Plans/Training)	56,405	311,094	311,094	273,490	254,689	160,680	1,367,452
Sub-Total	8,976,296	10,301,115	29,993,982	53,327,196	34,620,395	7,757,574	144,976,558
2 Tourism Project							
(a) Improving Management and Infrastructure in Etosha National Park	999,971	2,049,000	5,570,200	15,968,535	8,765,558	7,159,725	40,512,989
(b) Marketing Namibia in Tourism	500,000	1,397,223	2,365,623	2,417,186	1,575,619	-	8,255,651
(c) Ecotourism Development for Communal Conservancies	975,174	1,266,757	5,102,867	4,979,079	4,450,017	1,416,757	18,190,651
Sub-Total	2,475,145	4,712,980	13,038,690	23,364,800	14,791,194	8,576,482	66,959,291
3. Agriculture Project							
(a) Land Access and Management	-	181,390	7,268,360	6,604,130	4,936,130	2,168,017	21,158,027
(b) Livestock	1,369,139	475,468	8,980,464	5,985,447	2,018,000	268,000	19,096,518
(c) Indigenous Natural Products	-	906,192	1,710,024	1,875,994	1,475,994	742,571	6,710,775
Sub-Total	1,369,139	1,563,050	17,958,848	14,465,571	8,430,124	3,178,588	46,965,320
4. Program Management and Administration							
(a) MCA-Namibia Administration	5,000,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	21,000,000
(b) Financial Management and Procurement Controls	1,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	16,000,000
(c) Financial Audits	-	400,000	400,000	400,000	400,000	400,000	2,000,000
Sub-Total	6,000,000	6,600,000	6,600,000	6,600,000	6,600,000	6,600,000	39,000,000
5. Monitoring and Evaluation							
(a) Monitoring and Evaluation	722,595	1,774,617	1,027,399	1,024,139	1,006,920	1,020,977	6,576,647
Sub-Total	722,595	1,774,617	1,027,399	1,024,139	1,006,920	1,020,977	6,576,647
GRAND TOTAL	19,543,175	24,951,762	68,618,919	98,781,706	65,448,633	27,133,621	304,477,816

Annex III Description of Monitoring and Evaluation Plan

This Annex III (this ''*M&E Annex*'') generally describes the components of the Monitoring and Evaluation Plan (''*M&E Plan*'') for the Program.

1. Overview

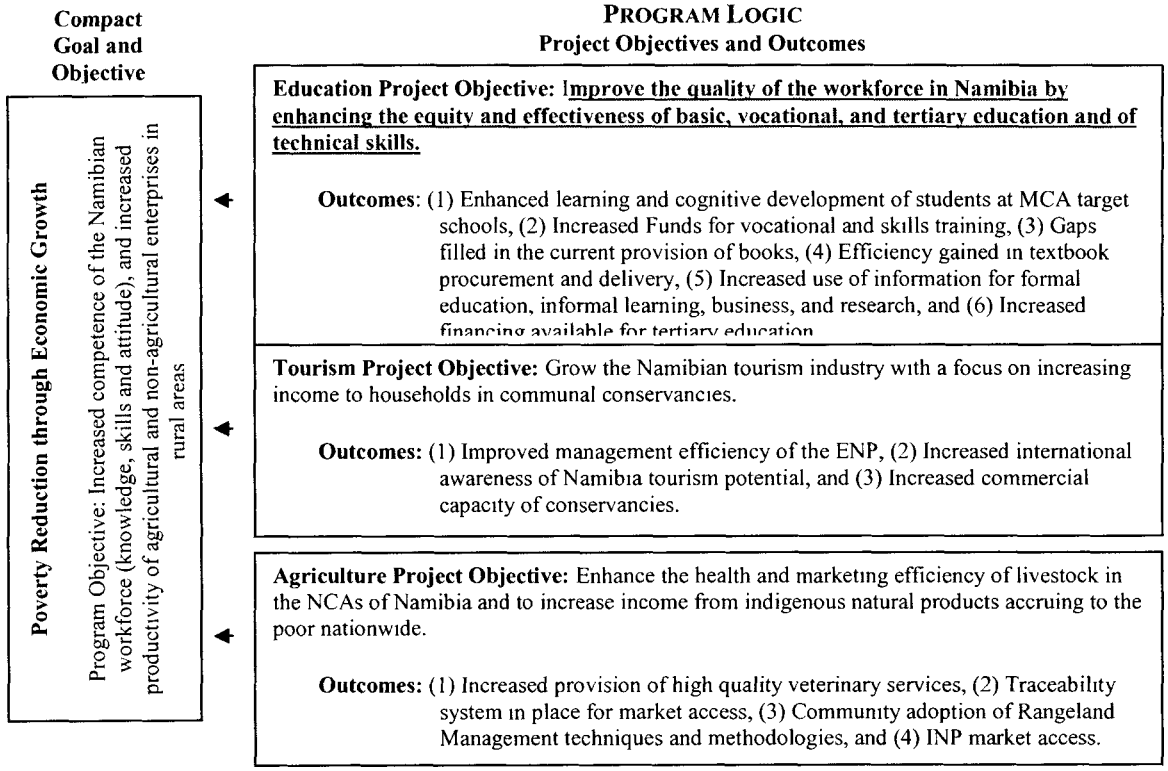
MCC and Namibia will formulate, agree to and Namibia will implement, or cause to be implemented, an M&E Plan that specifies (a) how progress toward the Program goal and objectives will be monitored, (''*Monitoring Component*''), (b) process and timeline for the monitoring of planned, ongoing, or completed Project Activities to determine their efficiency and effectiveness, and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (''*Evaluation Component*''). Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the Web site of MCA-Namibia and elsewhere.

2. Program Logic

The M&E Plan will be built on a series of logic models which illustrate how the Program, Projects and Project Activities contribute to poverty reduction and economic growth in Namibia. The chart below provides a visual representation of each Project's objectives and outcome statement that this Compact will seek to achieve. In sum, the goal of the Program is to contribute to economic growth and

poverty reduction among targeted beneficiaries primarily in the northern area of Namibia.

The following chart stating the Project objectives and the outcomes illustrates how each of the Projects addresses poverty reduction in the applicable sectors:



3. Monitoring Component

To monitor progress toward the achievement of the impact and outcomes, the Monitoring Component of the M&E Plan will identify (a) the indicators, (b) the definitions of the indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible, and (f) the timeline for reporting on each indicator to MCC.

Further, the Monitoring Component will track changes in the selected indicators for measuring progress towards the achievement of the objectives during the Compact Term. Before the initiation of implementation activities for each Project, MCA-Namibia will collect baseline data on the selected indicators or verify already collected baseline data.

(a) Indicators. The M&E Plan will measure the results of the Program using quantitative, objective and reliable data (''*Indicators*''). Each indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved (''*Target*''). The M&E Plan will be based on a logical framework approach that classifies indicators as goal, outcome, output, and process milestones. The Compact Goal indicators (''*Goal Indicators*'') will measure the general contribution of the Projects to the national economic growth and poverty reduction. Second, the Project objective and outcome (''*Project Objective and Outcome Indicators*'') will measure the final result of each Project. Third, Output Indicators and process milestones (''*Project Activity Indicators*'') will measure the early and intermediate results of the Project Activities. For each Project Objective, Outcome, and Activity Indicator, the M&E Plan will define a strategy for obtaining and verifying the value of such indicator prior to undertaking any activity that affects the value of such Indicator (such value, a ''*Baseline*''). All indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, MCA-Namibia may add indicators or refine the definitions and Targets of existing indicators.

(i) Goal. The M&E Plan will contain the Goal Indicators listed in the table below specifying the definition, baseline, and end of Compact Target for each.

GOAL LEVEL

Result	Indicator	Definition of indicator	Baseline	Target
Economic Growth and Reduction of Poverty.	Poverty Rate [10]	Relative poverty: Percent of households devoting more than 60 percent of total household income to food expenses.[11]	28%	20%
		Extreme poverty: Percentage of household devoting more than 80 per cent of total income to food expenses.[12]	4%	2%

GOAL LEVEL—Continued

Result	Indicator	Definition of indicator	Baseline	Target
	Unemployment Rate [13]	Percentage of economically active population who are currently unemployed.	35%	33.6%
	Average Income per Household.[14]	The average annual household consumption expenditures in cash, in-kind and non consumption expenditures such as savings and investment and other nonconsumption disbursements (corrected for CPI).	US$6,031	TBD

(ii) Project Objective, Outcome and Activity Indicators. The M&E Plan will contain Project Objective, Outcome, and Activity Indicators which will measure the results for the 3 (three) main Projects and are listed below with their definitions, baseline and targets. Prior to the initiation of implementation of a Project Activity, MCC and MCA-Namibia will agree on a final set of Activity Indicators. The M&E Plan will contain these indicators or will be amended to contain these indicators.

PROJECT: EDUCATION [15]

OBJECTIVE LEVEL

Result	Indicator	Definition of indicator	Baseline	Year 5
Enhanced learning and cognitive development of students.	Transition Rate of 5th and 8th Grade Students.	Number of 5th grade students who pass the national transitional examinations for 5th grades.[16]	1,528	1,554
		Number of 8th grade students who pass the national transitional examinations for 8th grades.[17]	2,982	3,018
	National Pass Rate of JSC and NSSC Learners in the Basic Subjects of the DNEA Examination.[18]	Percentage of learners achieving D or better in mathematics, life science, physical science, and English as a second language on JSC (grade 10).	43%	[19] 53%
		Percentage of learners achieving D or better in mathematics, life science, physical science, and English as a second language on NSSC Ordinary Level exams (grade 12).	31%	41%
Increased supply level of skills demanded by employers.	Employment rate of COSDEC participants in the national industries.	Percentage completing COSDEC who are full time or self employed in the sector of studies within the national industries one year after completion of required course of studies in the COSDEC program.	49%	70%
	Employment rate of other vocational skill development programs in national industries.	Percentage who are full time or self-employed one year after completion of vocational skill training programs.	40%	75%

OUTCOME LEVEL

Result	Indicator	Definition of indicator		Baseline	Year 5
Activity: Improving the Quality of General Education					
Enhanced learning and cognitive development of students at MCC target schools.	DNEA examination results (MCC target schools).[20]	Percentage of learners at MCC target schools achieving D or better in mathematics, life science, physical science, and English JSC exam (grade 10).[21]		43%	53%
	Transition rate of 5th and 8th grade students (MCC target schools).	Percentage of 5th and 8th grade students passing the national transition examination in MCC target schools.	5th	1,528	1,554
			8th	2,982	3,018

[10] Definitions of Relative and Extreme poverty inline with that of the NDP 3.

[11] Baseline from the National Development Plan 3 (NDP 3). Target taken from the NDP 3 and is thus inline with National development objectives and goals.

[12] Baseline from the NDP 3.

[13] Target taken from the *National Development Plan 3 (NDP 3)* and is thus inline with National development objectives and goals.

[14] Namibia Household Income and Expenditure Survey 2003/2004 Preliminary Report, March 2006. The stated average annual adjusted income per household is N$42,129 with per capita income of N$8,556 and adjusted per capita income of N$10,357. The baseline figure uses an average NAD–US$ exchange rate for 2003/04 of N$6,985 : US$1.

	Survival Rate	Percentage of 5th, 8th and 11th grade students who have remained in each phase of school since first grade.	[22] 5th	94.1%	94.3%
			[23] 8th	80.7%	84.6%
			[24] 11th	38.6%	40.0%
	Repetition Rate	Percentage of 1st, 5th, and 8th grade students who have dropped out or repeated grade levels.	[25] 1st	19.7%	19.5%
			[26] 5th	22.8%	22.6%
			[27] 8th	21.1%	21.0%
Activity: Improving Vocational and Skills Training					
Enhanced workforce skills ..	Completion rate of COSDEC participants.[28]	Percentage of total participants who completed required course work within the specified time period of the program.		70%	85%
	Completion rate of participants of other Vocational skill training programs.	Percentage of total participants of other Vocational skill training who completed required activities within the specified time period of the program.		TBD	80%
	COSDEC enrollment Rate	Total COSDEC participant enrollment within a year		1,150	3,000
	Vocational Skills training enrollment rate.[29]	Total MCC assisted Vocational Skill training program enrollment within a year.		1,670	2,171
	Annual Revenue to NTF	Funds contributed to NTF from Employers (Private sector training levy and other sources) (2008 US$).		US$0	US$1,600,000
Activity: Upgrading Access to and Management of Adequate Textbooks					
Gaps filled in the current provision of books.	% of schools meeting the target of Textbook Students ratio.[30]	Total number of schools as a percentage of the total number of national schools who are meeting the targeted student textbook ratio of 1:2.		TBD	TBD
Efficiency in textbook procurement and delivery.	Textbook Inventory Turning Rate.[31]	% of textbook inventory delivered on time to schools out of the total textbooks procured for a given year.		TBD	95%
Activity: Investment in Regional Study and Resource Centers					
Increased use of information for formal education, informal learning, business, and research.	Resource and learning materials loaned out per year.[32]	The total number of library books loaned out per year in the MCA assisted libraries.		33,921	84,406
	Total number of visits to new RSRCs.	Total number of annual visits to 3 new MCC-funded RSRCs.		31,000	100,000
Activity: Expanding and Improving Access to Tertiary Finance					
Increased financing available for tertiary education.	% of qualified financial aid applicants receiving loans for the school year.	Percentage of the total qualified financial aid applicants enrolled in tertiary institutions who actually received students loans for the school year.		20%	60%
	Repayment rates [33]	Percentage of loans awarded under the new system being paid on time.		20%	75%

PROJECT: TOURISM
OBJECTIVE LEVEL

Result	Indicator	Definition of indicator	Baseline	Year 5
Growth of tourism industry targeting poor beneficiaries.	Annual total tourist arrivals in Namibia by origin.[34]	Total number of tourist arrivals recorded per annum (excluding South African and Angolan multi purpose business-tourism visits).	864,451	1,057,000
	Total Tourism Industry employment.[35]	Total direct employment created within the tourism industry by travel and tourism companies excluding government agencies and supplier company employments.	21,508	24,573
	Increased Household (HH) income.[36]	Increases in income of HH in targeted communal conservancies areas.	27,885	41,827

PROJECT: TOURISM—Continued

OBJECTIVE LEVEL

Result	Indicator	Definition of indicator	Baseline	Year 5
Activity: Improving Management and Infrastructure in Etosha National Park				
Improved management and management efficiency of the ENP.	Total ENP revenue [37]	Annual total revenue generated by ENP including gate receipts and concession fees (2007 US$).	2,963,538	4,142,529
	Park attendance [38]	The annual total park attendance for ENP based on park entry records.	200,000	293,000
Activity: Marketing Namibia in Tourism				
Increased awareness of Namibia's tourism products.	Number of tourist arrivals from new targeted markets.	Total number of tourist arrivals recorded for new targeted markets (target expressed as a percent change over the baseline) [39].	19,342	[40] 30,947
Activity: Ecotourism Development for Communal Conservancies				
	Conservancy benefits to households and community.	Fraction of conservancy revenues paid out as household income/dividends plus amounts invested in community projects (schools, clinics, social services) and new enterprise expansion. Figure is the average across all MCC-supported conservancies.	[41] 34%	75%
Increased commercial capacity of conservancies.	Total revenue to targeted registered conservancies.[42]	The total revenue generated by all conservancies supported by MCC—including in-kind revenues (target expressed as a percent change over the baseline, 2008 US$).	2,952,175	4,149,422
	Conservancy sustainability	The number of conservancies achieving a positive net income [43]. — Of 17 established conservancies (registered before Aug 1, 2003).	[44] 9	16
		Of 14 beginning conservancies (registered after Aug 1, 2003).	[45] 0	7

PROJECT: AGRICULTURE

OBJECTIVE LEVEL

Result	Indicator	Definition of indicator	Baseline	Year 5
Increased health of cattle	Mortality Rate [46]	Percentage of the total population that dies of diseases per annum NCAs.	0.03%	TBD
Enhanced and efficient marketing system.	Annual Turnover [47] (formal Market).	Number of cattle slaughtered in formal markets (public and private abattoirs) in the NCAs.	19,000	28,000
Increased INP growth with benefits accruing to households.	Percent increase in INP revenue.	Percent increase in INP revenue from base year (corrected for CPI inflation) among members of PPOs targeted for assistance.	na	50%

OUTCOME LEVEL

Result	Indicator	Definition of indicator	Baseline	Year 5
Activity: Livestock Activity				
Provision of High Quality Veterinary Services.	CBPP vaccination Rate [48]	Percentage of livestock in the NCAs vaccinated against CBPP.	78%	95%
	Frequency of NCA homestead/village visits by DVS.	Average number of service contacts per household per year by DVS.	1	2
Efficient Traceability system	Total livestock movement transactions recorded.[49]	Total recorded livestock movements through transit holdings such as market places and exhibition sites.	TBD	TBD

OUTCOME LEVEL—Continued

Result	Indicator	Definition of indicator	Baseline	Year 5
	Number of livestock tagged in the NCAs.	Number of livestock tagged in the NCAs under MCC mass tagging (cumulative) and subsequent owner tagging.	0	1,170,000
Enhanced efficiency of livestock quarantine and marketing.	Post farmgate cost reduction ..	The cost saving to herders from improvements in the efficiency of marketing, transport, and quarantining of livestock.	0	[50] 50%
Activity: Land Access and Management Activity				
Community adoption of Rangeland Management techniques and methodologies.	Value of livestock sold by communities in formal markets.[51]	Average percent difference in total value of livestock sold in previous year between target communities adopting techniques and comparison communities.	19%	50%
	Adoption rate of improved rangeland management methodology and techniques.	Percentage of targeted communities practicing appropriate rangeland management techniques and methodology.	0%	40%
Activity: Indigenous Natural Products Activity				
Market access for INPs	Percentage of targeted PPOs granted certification.	Percentage of targeted PPOs certified for organic production and fair trade status.	0	67%

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and reporting timelines will be conditions for disbursements for the relevant Project Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels. The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the

[15] Education indicators with target from ETSIP will be adjusted in accordance with the annual ETSIP reviews.

[16] In the absence of disaggregated data specific for the 47 target schools the baseline represents the national average for all schools offering grade 5, calculated for 36 schools, out of the target 47 that offers grade 5. To be revised once disaggregated data for the 47 target schools is available. Target is based on an average annual rate of increase of 0.329% per annum for transition of 5th graders. To be revised once disaggregated data for the 47 target schools is available. Data from EMIS 2007.

[17] In the absence of disaggregated data specific for the 47 target schools the baseline represents the national average for all schools offering grade 8, calculated for all 47 schools offering grade 8. To be revised once disaggregated data for the 47 target schools is available. Target is based on an average annual rate of increase of 0.241% per annum for transition of 8th graders. To be revised once disaggregated data for the 47 target schools is available. Data from EMIS 2007.

[18] ETSIP target for 2011 = 52.1%. ETSIP targets are being reviewed so this target will be revised once ETSIP data are available (July 08).

[19] ETSIP target for 2011 = 62.9%. ETSIP targets are being reviewed so this target will be revised once ETSIP data available (July 08).

[20] This is representative of the national average of all schools. A baseline will be established for the MCC target schools.

[21] MCC target school figures only include junior secondary as most MCC target schools only offer this level to date. As more schools begin offering senior secondary, an indicator may be added for the NSSC.

[22] Target based on annual average rate of change (for 2000–2006) of 0.04%; to be revised against revised ETSIP targets. Data from EMIS 2007.

[23] Target based on annual average rate of change (for 2000–2006) of 0.94%; to be revised against revised ETSIP targets. Data from EMIS 2007.

[24] Target based on annual average rate of change (for 2000–2006) of 0.68%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

[25] Target based on annual average rate of change (for 2000–2006) of 0.341%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

[26] Target based on annual average rate of change (for 2000–2006) of 0.15%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

[27] Target based on annual average rate of change (for 2000–2006) of 0.132%; but to be revised against revised ETSIP targets. Data from EMIS 2007.

[28] ETSIP indicator with a baseline target for 2008.

[29] Year 5 Target is based on a 30% increase of the baseline.

[30] Baseline to be determined during MCC funded textbook survey. Target of 1 textbook per every 2 students inline with ETSIP target and can be amended against revised ETSIP targets.

[31] Baseline to be determined during MCC funded textbook survey.

[32] Baseline from MoE. Year 5 target is based on an annual increase of 20%.

[33] Baseline based on loan repayment rate for 2007.

[34] NTB data.

[35] Baseline data is based on preliminary figures from Namibia's 2007 Tourism Satellite Accounts (TSA). The year 5 target is based on projected 2.7% annual growth.

[36] Baseline is based on average income to conservancy households for the 31 MCC target conservancies at an average US$–NAD exchange rate for 2007 of US$1 : NAD 7.195. The target is projected as 50% growth of the baseline. To be confirmed before Compact entry into force.

[37] Baseline based on CPI adjusted total revenue for 2007 at an average US$–NAD exchange rate for 2007 of US$1 : NAD 7.195.

[38] Baseline data from MET. Year 1 target is the same as the baseline as MCA interventions will only impact from Year 2. The year 5 target is based on annual 10% growth. The target will be revised based on the outcome of the MCC-funded Carrying Capacity study for ENP.

[39] Baseline refers only to USA arrivals.

[40] The year 5 Target is based on a 60% increase from the baseline.

[41] Baseline is an estimate. Actual figure will be determined before Compact entry into force.

[42] Baseline data is based on 23 registered conservancies, out of the 31 proposed for MCC support, that generate revenue (US$1 = N$ 7.195). The remaining 8 conservancies are emerging with high potential for revenue generation. The baseline is corrected for the 2007 average CPI.

[43] The calculation of profit (profit = revenue − cost) will include all relevant costs such as in kind services from donors (i.e. negotiating assistance and auditing services) and amortization of capital investment.

[44] Baseline is an estimate. Actual figure will be determined before Compact entry into force.

[45] Baseline is an estimate. Actual figure will be determined before Compact entry into force.

[46] Baseline is based on total mortality as percentage of total estimated cattle population in the NCA. Data will be revised against the outcome of the MCC funded livestock survey.

[47] Baseline data from Meatco. Target is projected at 8% annual growth.

[48] Baseline data from Directorate of Veterinary Services (DVS), MAWF. Target is projected at 4% annual growth.

[49] Baselines and targets to be determined during the MCC-funded livestock survey.

[50] Estimation from MCC ERR calculation.

[51] Baseline calculated as percent difference in the average value of cattle sold in 2006 and 2007. Data from Meatco.

consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) Management Information System. The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with MCC existing systems, other service providers, and ministries.

(e) Role of MCA-Namibia. The monitoring and evaluation of this Compact spans across three discrete Projects and will involve a variety of governmental, non-governmental, and private sector institutions. MCA-Namibia holds full responsibility for implementation of the M&E Plan. MCA-Namibia will oversee all Compact-related monitoring and evaluation activities conducted by each of the Projects, ensuring that data from all implementing entities is consistent, and accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

4. Evaluation Component

The Evaluation Component of the M&E Plan will contain three types of evaluations: Impact Evaluations, Project Performance Evaluations, and Special Studies. Plans for each type of evaluation will be finalized before MCC Disbursement for specific Program or Project activities. The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, as well as the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC Guidelines for Monitoring and Evaluation Plans.

(a) Impact Evaluation: The M&E Plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into project design. Based on in-country consultation with stakeholders, the following strategies outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E Plan will further outline in detail these methodologies. Final impact evaluation strategies are to be jointly determined before the approval of the M&E Plan and before entry into force of this Compact. The following is a summary of the potential impact evaluation methodologies:

(i) Agriculture Project: The CBLRM Activity will be subjected to rigorous impact evaluation. The evaluation will address the effectiveness of the Activity in improving herders' value, grade and incomes. As the Activity is envisioned as a pilot, the evaluation will contribute to the justification for scaling up the Activity through arrangements outside this Compact. The evaluation will include measurement of outcomes of communities outside the target communities. The appropriate rigorous methodology will be used.

(ii) Education Project: The purpose of the impact evaluation will be to assess the effectiveness of the Education Quality Activity through: (1) The quantity of education services provided; (2) the quality of education services provided; and (3) learning outcomes. The evaluation will include measurements taken from non-MCC target schools to establish a comparison group.

The evaluation may also address the Textbook Activity and other activities that may improve school supervision.

(b) Projects Evaluation. The M&E Plan will make provision for project level evaluations. MCA-Namibia, with the prior written approval of MCC, will engage independent evaluators to design the Project Performance Evaluations to be conducted at the end of each Project or MCC may engage the independent evaluators. The Project Performance Evaluations must at a minimum (i) evaluate the efficiency and effectiveness of the Project Activities; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the expected impact (to the extent possible), the intended outcomes and outputs; (iii) determine if and analyze the reasons why this Compact Goal, Program Objective and Project Objectives were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Namibia, such an independent evaluator will review the plans for the collection of baseline data and, as applicable, plans for selecting comparison groups.

(i) Special Studies. The M&E Plan will include a description of the methods to be used for Special Studies funded through this Compact or by MCC.

Plans for conducting the Special Studies will be determined jointly between MCA-Namibia and MCC before the approval of the M&E Plan and before entry into force of this Compact. The M&E Plan will identify and make provision for any other special studies, ad hoc evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or MCA-Namibia may request special studies or ad hoc evaluations of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. When MCA-Namibia engages the evaluator, the evaluator will be an externally contracted and independently source selected by MCA-Namibia. The aforementioned engagement will be subject to the prior written approval of MCC, following a tender in accordance with the MCA-Namibia Procurement Rules, and in accordance with any relevant Implementation Letter or supplemental agreement. Contract terms must ensure non-biased results and the publication of results.

(c) Request for Ad Hoc Evaluation or Special Study: If MCA-Namibia requires an ad hoc independent evaluation or special study at the request of Namibia for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Namibia resources may be applied to such evaluation or special study without MCC's prior written approval.

5. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan will include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumption and risk external to the Program that underlies the accomplishment of the Objectives and Project Activity Outcomes. However, such assumptions and risks will not excuse Parties' performance unless otherwise expressly agreed to in writing by all Parties.

6. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with this

M&E Annex, PIA, and any other relevant supplemental agreement.

Annex IV Conditions to Disbursement of Compact Implementation Funding

Capitalized terms used in this Annex IV and not defined in this Compact will have the respective meanings assigned thereto in the Program Implementation Agreement.

1. Conditions to Each CIF Disbursement

(a) Delivery by Namibia (or MCA-Namibia) to MCC of the following documents, in form and substance satisfactory to MCC:

(i) a complete, correct and fully executed Disbursement Request for the relevant Disbursement Period, together with the Periodic Reports covering such Disbursement Period.

(ii) any proposed waiver or deferral (together with a justification) of any condition to Disbursement.

(iii) a completed Detailed Financial Plan covering Compact Implementation Funding.

(b) Prior to the deposit of any Disbursement of Compact Implementation Funding (each a ''*CIF Disbursement*'') into any Permitted Account in accordance with an approved Disbursement Request, MCC will have received satisfactory evidence of the establishment of the Permitted Accounts.

(c) The monitoring and evaluation officer for MCA-Namibia has been selected and approved by MCC and remains engaged, or in the event a position is vacant, MCA-Namibia is actively recruiting for the position.

(d) The Fiscal Agent Agreement shall be executed and effective and the Fiscal Agent shall be mobilized.

(e) The Procurement Agent Agreement shall be executed and effective and the Procurement Agent shall be mobilized.

(f) The Bank Agreement shall be executed and effective and the Bank shall be mobilized.

(g) If applicable, the tax agreements described in Section 2.8(b) of this Compact shall be executed and effective, together with any laws, rules or regulations necessary to give effect thereto.

(h) MCC is satisfied, in its sole discretion, that (i) the activities being funded by such CIF Disbursement are necessary, advisable or otherwise consistent with the goal of facilitating the implementation of the Compact and will not violate any applicable law or regulation; (ii) no material default or breach of any covenant, obligation or responsibility by Namibia, MCA-Namibia or any Namibia entity has occurred and is continuing under this Compact or any supplemental agreement; (iii) there has been no violation of, and the use of requested funds for the purposes requested will not violate, the limitations on use or treatment of MCC Funding set forth in this Compact, including under Section 2.7; (iv) any Taxes paid with MCC Funding through the date 90 days prior to the start of the applicable Disbursement Period have been reimbursed by Namibia in full in accordance with Section 2.8 of this Compact; and (v) Namibia has satisfied all of its payment obligations, including any insurance, indemnification, tax payments or other obligations, and contributed all resources required from it, under this Compact and any supplemental agreement.

(i) Namibia has provided MCC with evidence that the regulations exempting the Projects and contractors to be engaged to work on the Projects from the provisions of the Architects and Quantity Surveyors Act 13 of 1979 and Engineering Profession Act 18 of 1986 have been passed and are in full force and effect, in each case in accordance with their terms.

(j) For any CIF Disbursement occurring after this Compact has entered into force: MCC is satisfied, in its sole discretion, that (i) MCC has received the reports then due from any technical consultants (including environmental auditors engaged by MCA-Namibia for any Project Activity), and all such reports are in form and substance satisfactory to MCC; (ii) the Implementation Plan Documents submitted to MCC are current and updated and are in form and substance satisfactory to MCC, and there has been satisfactory progress on the components of the Implementation Plan for any relevant Projects or Project activities related to such CIF Disbursement; (iii) there has been satisfactory progress on the M&E Plan for the Program, relevant Project or Project Activity and substantial compliance with the requirements of such M&E Plan (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period); (iv) there has been no material negative finding in any financial audit report delivered in accordance with this Compact and Audit Plan, for the prior two quarters (or such other period as the Audit Plan may require); (v) MCC does not have grounds for concluding that any matter certified to it in the related MCA Disbursement Certificate, Fiscal Agent Disbursement Certificate or Procurement Agent Certificate is not as certified; and (vi) if any of the officers or key staff of MCA-Namibia have been removed or resigned and the position remains vacant, MCA-Namibia is actively engaged in recruiting a replacement.

(k) MCC has not determined, in its sole discretion, that an act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, MCC Funding in accordance with Section 5.1 of this Compact.

(l) Namibia has provided MCC with evidence, in form and substance satisfactory to MCC, that the program implementation unit that will serve as the management unit of MCA-Namibia has been established within NPC and has been exempted from the application of the Public Service Commission Act 13 of 1995.

Annex V Definitions

Additional Representative has the meaning provided in Section 4.2.

Activity has the meaning provided in Part A of Annex I.

Agriculture Project has the meaning provided in Part D of Annex I.

Audit Guidelines has the meaning provided in Section 3.8(a).

Baseline has the meaning provided in paragraph 3(a) of Annex III.

CBLRM Activity has the meaning provided in Part D of Annex I.

CEO has the meaning provided in of Part E of Annex I.

CIF Disbursement has the meaning provided in paragraph 1(b) of Annex IV.

CLBs has the meaning provided in Part A of Annex I.

CITES has the meaning provided in Part D of Annex I.

Communal Land Support Activity has the meaning provided in Part D of Annex I.

Compact has the meaning provided in the Preamble.

Compact Goal has the meaning provided in Section 1.1.

Compact Implementation Funding has the meaning provided in Section 2.2(a).

Compact Records has the meaning provided in Section 3.7(a).

Compact Term has the meaning provided in Section 7.4.

Conservancy Support Activity has the meaning provided in Part C of Annex I.

COSDECs has the meaning provided in Part A of Annex I.

Covered Provider has the meaning provided in Section 3.7(c).

Disbursement has the meaning provided in Section 2.4.

EA has the meaning provided in Part A of Annex I.

Education Project has the meaning provided in Part B of Annex I.

Education Quality Activity has the meaning provided in Part B of Annex I.

EIA has the meaning provided in Part A of Annex I.

EMP has the meaning provided in Part A of Annex I.

ENP has the meaning provided in Part C of Annex I.

ENP Activity has the meaning provided in Part C of Annex I.

Evaluation Component has the meaning provided in paragraph 1 of Annex III.

Excess CIF Amount has the meaning provided in Section 2.2(d).

Financial Plan Annex has the meaning provided in Annex II.

Fiscal Agent has the meaning provided in Part E of Annex I.

Goal Indicators has the meaning provided in paragraph 3(a) of Annex III.

GRN means the Government of the Republic of Namibia.

HAMU has the meaning provided in Part B of Annex I.

Implementation Letter has the meaning provided in Section 3.5.

Implementing Entity has the meaning provided Part E of Annex I.

Implementing Entity Agreement has the meaning provided in Part E of Annex I.

Indicators has the meaning provided in paragraph 3(a) of Annex III.

INP has the meaning provided in of Part A of Annex I.

INP Activity has the meaning provided in Part D of Annex I.

INP Innovation Fund has the meaning provided in Part D of Annex I.

Inspector General has the meaning provided in Section 3.8(a).

IPTT has the meaning provided in Part D of Annex I.

Land Access and Management Activity has the meaning provided in Part D of Annex I.

Livestock Market Efficiency Fund has the meaning provided in Part D of Annex I.

Livestock Support Activity has the meaning provided in Part D of Annex I.

M&E Annex has the meaning provided in Annex III.

M&E Plan has the meaning provided in Annex III.

Marketing Activity has the meaning provided in Part C of Annex I.

MCA Act has the meaning provided in Section 2.2(a).

MCA-Namibia has the meaning provided in Section 3.2(b).

MCA-Namibia Procurement Rules has the meaning provided in Section 3.6.

MCC has the meaning provided in the Preamble.

MCC Environmental Guidelines has the meaning provided in Section 2.7(c).

MCC Funding has the meaning provided in Section 2.3.

MCC Gender Policy has the meaning provided of Part A of Annex I.

MCC Web site has the meaning provided in Section 2.7.

MoE has the meaning provided in of Part B of Annex I.

MoF has the meaning provided in of Part C of Annex I.

Monitoring Component has the meaning provided in paragraph 1 of Annex III.

Multi-Year Financial Plan Summary has the meaning provided in paragraph 1 of Annex II.

Namibia has the meaning provided in the Preamble.

NCAs has the meaning provided of Part A of Annex I.

NPC has the meaning provided in Section 3.2(b).

NPC Act has the meaning provided in Section 3.2(b).

NTA has the meaning provided of Part B of Annex I.

NTF has the meaning provided in Part B of Annex I.

OMB has the meaning provided in Section 3.8(b).

OP 4.12 has the meaning provided Part A of Annex I.

Party and Parties has the meaning provided in the Preamble.

Performance Targets has the meaning provided in Part C of Annex I.

Permitted Account has the meaning provided in Section 2.4.

PPOs has the meaning provided Part D of Annex I.

Principal Representative has the meaning provided in Section 4.2.

Procurement Agent has the meaning provided in of Part E of Annex I.

Program has the meaning provided in the Preamble.

Program Funding has the meaning provided in Section 2.1.

Program Implementation Agreement or PIA has the meaning provided in Section 3.1.

Program Objective has the meaning provided in Section 1.2.

Project Activity Indicators has the meaning provided in paragraph 3(a) of Annex III.

Project Objective(s) has the meaning provided in Section 1.3.

Project Objective Indicators has the meaning provided in paragraph 3(a) of Annex III.

Project(s) has the meaning provided in Section 6.2(b).

Provider has the meaning provided in Section 3.7(c).

RAP has the meaning provided in Part A of Annex I.

Resettlement means involuntary resettlement, specifically (a) the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or (b) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

RSRC Activity has the meaning provided in Part B of Annex I.

RSRCs has the meaning provided in Part B of Annex I.

SEA has the meaning provided Part A of Annex I.

SPAN has the meaning provided in Part C of Annex I.

Target has the meaning provided in paragraph 3(a) of Annex III.

Taxes has the meaning provided in Section 2.8(a).

Tertiary Education Finance Activity has the meaning provided in Part B of Annex I.

Textbook Activity has the meaning provided in Part B of Annex I.

Tourism Project has the meaning provided in Part C of Annex I.

US$ means United States Dollars.

USG means the Government of the United States of America.

VET has the meaning provided in Part B of Annex I.

Vocational and Skills Training Activity has the meaning provided in Part B of Annex I.

Annex VI MCA-Namibia Procurement Rules

Part 1. Conduct and Administration of Procurement

The principles, rules and procedures agreed herein (''*Procurement Rules*'' or ''*Rules*'') shall govern the conduct and administration by MCA-Namibia of the procurement of the goods, works, consultant and non-consultant services that need to be acquired to implement the projects funded under the Compact (''*Project*'' or ''*Projects*'').

Section 1. A. Procurement Rules: Procurement of Goods, Works and Non-Consultant Services

I. Introduction

Purpose

1.1 The principles, rules and procedures set out in this Section 1.A of these Rules shall govern the conduct and administration of the procurement of the goods, works and non-consultant services [1] that need to be acquired to

[1] References to ''goods'' and ''works'' in these Rules include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. ''Goods'' includes commodities, raw materials, machinery, equipment, and industrial plants. The provisions of these Rules also apply to services

Continued

implement the Projects under the Compact.

General Considerations

1.2.1 MCA-Namibia is responsible for implementing the Projects, and therefore for selecting the contractors and suppliers, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following four considerations (the ''Procurement Principles'') are agreed to generally guide the application of these Rules: [2]

(a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure goods, works and non-consultant services;

(b) Solicitations for goods, works and non-consultant services shall be based upon a clear and accurate description of the goods, works or non-consultant services to be acquired;

(c) Contracts shall be awarded only to qualified and capable suppliers and contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and

(d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure goods, works and non-consultant services.

1.2.2 MCA-Namibia shall ensure that all the procurements for goods, works and non-consultant services in furtherance of the Compact and funded in whole or in part, directly or indirectly, with MCC funding shall comply with these Procurement Principles.

1.3 A competitive bidding process (''*Competitive Bidding*'' or ''*CB*'') shall serve as the standard for all procurements for all MCC-funded goods, works, and non-consultant services conducted in accordance with these Rules as set out in Sub-Section 1.A.II below, except in those instances where MCC and MCA-Namibia agree to pursue other methods of procurement.

Sub-Section 1.A.III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods to be followed for procurements under the Compact shall be set out in Procurement Plans approved by MCC.

1.4 Reserved.

Applicability of Section 1.A of These Rules

1.5 The procedures outlined in this Section 1.A of these Rules apply to all contracts for goods, works and non-consultant services funded by MCC under the Compact.[3]

Eligibility

1.6 To foster competition MCC permits firms and individuals from almost all countries [4] to offer goods, works, and non-consultant services for MCC-funded Projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.

1.7 In connection with any MCC-funded contract, MCA-Namibia shall not deny pre- or post-qualification to a firm for reasons unrelated to its capability and resources to perform the contract successfully; nor shall MCA-Namibia disqualify any bidder for such reasons. Consequently, MCA-Namibia should carry out due diligence on the legal, technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

1.8 As exceptions to the foregoing:

(a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the Republic of Namibia prohibits commercial relations with that country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the supply of goods or works required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Republic of Namibia prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the Republic of Namibia prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.

(b) A firm which has been engaged to provide consultant services for the preparation or implementation of a Project, and any of its affiliates, shall be disqualified from subsequently providing goods, works, consultant or non-consultant services resulting from or directly related to the firm's consultant services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the contractor's obligations under a turnkey or design and build contract.[5]

(c) Government-owned enterprises in the Republic of Namibia may participate if they are receiving no state subsidy and can demonstrate that they do not receive a cross-subsidy of income as a result of statutory powers.[6]

(d) A firm declared ineligible through MCC's Excluded Parties Verification procedures located at *http://www.mcc.gov/documents/mcc-ppg-eligibilityverification.pdf* shall be ineligible to be awarded an MCC-funded contract. This would also remove from eligibility any procurement from a country or from a firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.[7]

Advance Contracting and Retroactive Financing

1.9 The process of identifying and selecting contractors for the provision of goods, works or non-consultant services to implement projects funded under the Compact before the Compact enters into force is referred to as advance contracting. Similarly, payments made under a contract that is signed prior to the Compact entering into force for which MCA-Namibia would seek reimbursement from MCC is known as retroactive financing. MCA-Namibia will not engage in any advance contracting or be entitled to any retroactive financing, without the prior approval of MCC.

Joint Ventures

1.10 Any firm may bid independently or in joint venture confirming joint and several liability, with domestic firms and/or with foreign firms, but MCC does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

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which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping, and similar operations. The Rules governing consultant services are set out below at Section 1.B.

[2] These four principles are set out in Section 3.6 of the Compact.

[3] This includes those cases where MCA-Namibia employs an independent procurement agent, but excludes tenders awarded by MCC under its own procurement rules.

[4] Firms and individuals from any country subject to sanction or restriction by law or policy of the United States are not eligible to compete for MCC-funded contracts. See Paragraph 1.8(e) of Section 1.A of these Rules.

[5] See Paragraph 2.5 of Section 1.A of these Rules.

[6] Other than Force Account units, as permitted under Paragraph 3.8 of Section 1.A of these Rules.

[7] As of July 2008, this list includes Cuba, Iran, North Korea, Sudan and Syria.

MCC Review

1.11 MCC shall be entitled to review MCA-Namibia procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Attachment 1 of these Rules.

Misprocurement

1.12 MCC does not fund expenditures for goods, works and non-consultant services which have not been procured in accordance with the agreed provisions as detailed in the Compact, these Rules and the approved Procurement Plans.[8] In such cases, MCC will declare misprocurement, and may cancel that portion of the Compact allocated to the goods, works or non-consultant services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by MCA-Namibia or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.13 MCA-Namibia shall use the following language when referring to MCC in procurement documents:

The United States of America, acting through the Millennium Challenge Corporation (''MCC'') and the Republic of Namibia (the ''Government'') have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in the Republic of Namibia (the ''Compact'') in the amount of [Insert amount of Compact] US$ (''MCC Funding''). MCA-Namibia on behalf of the Government intends to apply a portion of the proceeds of MCC Funding to eligible payments under this contract. Payments by MCA-Namibia will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and MCA-Namibia shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

Fraud and Corruption

1.14 MCC requires that all beneficiaries of MCC funding, including MCA-Namibia and any bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following provisions shall apply.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) ''Corrupt practice'' means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA-Namibia and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (aa) the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*) (''*FCPA*''), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (bb) any applicable law in the Republic of Namibia;

(ii) ''Fraudulent practice'' means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(iii) ''Collusive practice'' means a scheme or arrangement between two or more parties, with or without the knowledge of MCA-Namibia, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive MCA-Namibia of the benefits of free and open competition;

(iv) ''Coercive practice'' means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(v) ''Obstructive practice'' means:

(aa) Destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; and

(bb) Acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact; and

(vi) ''Prohibited practice'' means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) and Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the ''General Provisions Annex'' that will be made a part of MCC-funded contracts and may be found on the MCC Web site at *http://www.mcc.gov/guidance/compact/general_provisions.pdf*.

(b) MCA-Namibia will reject a bid (and MCC will deny approval of a proposal for contract award) if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for the contract in question.

(c) MCC and MCA-Namibia have the right to sanction a bidder, supplier, contractor, or subcontractor, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either MCA-Namibia or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for, or in executing, such a contract.

(d) MCC and MCA-Namibia have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a bidder, supplier, contractor, or subcontractor to permit MCA-Namibia, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a bid or performance of a MCC-funded contract and to have them audited by auditors appointed by MCC or MCA-Namibia with the approval of MCC.

(e) MCC has the right to cancel the portion of MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices during the selection process or the execution of a MCC-funded contract, without MCA-Namibia having taken timely and appropriate action satisfactory to MCC to remedy the situation.

1.15 To the extent required by Namibian law, MCA-Namibia shall introduce, into bid forms for large contracts funded by MCC, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and

[8] See Paragraphs 1.16.1, 1.16.2 and 1.16.3 of Section 1.A of these Rules.

corruption (including bribery), as listed in the solicitation documents. In the event such an undertaking is not required by Namibian law, MCA-Namibia may introduce the undertaking with the approval of MCC.

Procurement Plan

1.16.1 MCA-Namibia shall prepare periodic procurement plans, that are updated at least semi-annually, for acquiring goods, works and non-consultant services needed to implement the Compact (each a ''Procurement Plan''). Each Procurement Plan shall be adopted by the governing body of MCA-Namibia and shall be submitted to MCC for its approval. Each Procurement Plan,[9] typically covering a six (6) month period, (a) lists the particular contracts for the goods, works, and/or non-consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identifies the proposed method of procurement for such contracts as determined according to these Rules; and (c) sets forth the estimated value for each contract.

1.16.2 MCA-Namibia shall ensure that all goods, works and non-consultant services shall be procured using the procurement method approved in each Procurement Plan. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements or payments.

1.16.3 MCA-Namibia shall not initiate any procurement action that is a substantial deviation[10] from the applicable adopted and approved Procurement Plan without the prior approval of MCC. If MCA-Namibia determines that such a deviation is necessary or appropriate, MCA-Namibia shall submit a request to MCC for its approval of an amended Procurement Plan. If approved by MCC, MCA-Namibia shall comply with any instructions contained in the MCC approval, including any publication requirements. Any substantial deviation from a Procurement Plan as approved and adopted shall be submitted to the governing body of MCA-Namibia for adoption of the amended Procurement Plan.

II. Competitive Bidding

A. General

Introduction

2.1 The objective of Competitive Bidding, as described in these Rules, is to provide all eligible prospective bidders[11] with timely and adequate notification of MCA-Namibia's requirements and an equal opportunity to bid for the required goods, works and non-consultant services.

Type and Size of Contracts

2.2 The solicitation documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate for the type of contract to be used. Reimbursable cost contracts are acceptable to MCC only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts shall include appropriate incentives to limit costs and shall reference MCC Cost Principles (''*MCC Cost Principles*'') found at the MCC Web site, *http://www.mcc.gov.* Requirements contracts, indefinite delivery-indefinite quantity (''IDIQ'') contracts and blanket purchase agreements may also be used.

2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the Project. For Projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant[12] and for the works.

2.4 For a Project requiring similar but separate items of goods or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms which could be allowed, at their option, to bid for individual contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to MCA-Namibia.[13]

2.5 In certain cases a turnkey contract may be required under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided under one contract. Alternatively, MCA-Namibia may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the Project component. Design and build, and management contracting contracts may also be appropriate.[14]

Two-Stage Bidding

2.6 In the case of turnkey contracts or contracts for large complex facilities or works of a special nature, or complex information and communication technology, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a Two-Stage Bidding procedure may be used, under which first un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents[15] and the submission of final technical proposals and priced bids in the second stage.

Notification and Advertising

2.7 On at least a semi-annual basis, MCA-Namibia shall publicize the procurements planned for the upcoming period as identified in the adopted Procurement Plan, which was approved by MCC (each a ''General Procurement Notice''). The General Procurement Notice shall be in a form acceptable to MCC and include information derived from the Procurement Plan and the name, telephone (or fax) number, and e-mail and postal address of MCA-Namibia agent responsible for procurement and the address of the Web site(s) where Specific Procurement Notices will be posted. If known, the scheduled date for availability of solicitation documents for each procurement (including prequalification or bidding documents) should be indicated. Such solicitation documents shall not be released to the public earlier than the date of publication of the General and Specific Procurement Notices. The General Procurement Notice shall be advertised in a manner to provide reasonable notice of planned procurements to potential suppliers and contractors. Advertisement of the

[9] When consultant services also need to be procured, the Procurement Plan must also include such procurements in accordance with the requirements at Section 1.5 Par. 1.24 of these Rules.

[10] A ''substantial deviation'' is a change that adds a procurement action or actions that have a cumulative value of $10,000 or more, changes the procurement method, significantly increases or decreases the budget, or increases the budget allocations above the threshold for the designated method of procurement or selection procedure.

[11] See Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Rules.

[12] For purposes of these Rules, ''plant'' refers to installed equipment, as in a production facility.

[13] See Paragraphs. 2.49–2.54 of Section 1.A of these Rules for the bid evaluation procedures.

[14] Also see Paragraphs 3.14 and 3.15 of Section 1.A of these Rules for performance-based contracting.

[15] In revising the bidding documents in the second stage MCA-Namibia should respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

General Procurement Notice shall include posting in English at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC), the Development Gateway Market Web site at *www.dgmarket.com* (''*dgMarket*'') and the United Nations Development Business online Web site at *www.devbusiness.com* (''*UNDB Online*'').[16] MCA-Namibia shall also publish the General Procurement Notice in a newspaper of wide circulation in the Republic of Namibia and in such other media outlets as appropriate or as requested from time to time by MCC.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices (each, a ''*Specific Procurement Notice*''). For contracts for Goods and Non-consulting services valued at or over US $200,000 and contracts for Works valued at or over US $1,000,000, such invitations shall be published in at least one newspaper of national circulation in the Republic of Namibia, posted on MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) and at dgMarket Web site and UNDB Online. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings.

For contracts for Works valued at or over US$200,000 and under US$1,000,000, such invitations shall be published in at least one newspaper of national circulation in the Republic of Namibia and posted on MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC). The text of the notice may be subject to prior approval by MCC. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses taking into consideration the estimated value of the contract and period of advance notice given with the General Procurement Notice.[17]

Prequalification of Bidders

2.9 Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plants, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past performance on similar contracts, (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised as described in Paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. All such applicants that meet the specified criteria shall be allowed to bid. MCA-Namibia shall inform all applicants of the results of prequalification. As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of prequalified firms in such instances shall be updated periodically. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged no longer to have the capability or resources to perform the contract successfully.

B. Bidding Documents

General

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works and non-consultant services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: Invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. MCA-Namibia may use an electronic system to distribute bidding documents, provided that MCC is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of bidders to the bidding documents. Guidance on critical components of the bidding documents is given in the following paragraphs.

2.12 MCA-Namibia shall use the appropriate Standard Solicitation Documents, including the Standard Bidding Documents, as approved by MCC pursuant to Part 3 of these Rules, and as may be modified to address Project-specific conditions, subject to approval by MCC when the change is material. To the extent possible, such changes shall be introduced through bid or contract data sheets or through special conditions of contract, and not by introducing changes in the standard wording of MCA-Namibia's Standard Solicitation Documents.

Validity of Bids and Bid Security

2.13 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable MCA-Namibia to complete the comparison and evaluation of bids, review the recommendation of award with MCC (if required), and obtain all the necessary approvals so that the contract can be awarded within that period.

2.14 MCA-Namibia has the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents[18] and shall remain valid for a sufficient time beyond the validity

[16] UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163–5850, USA (Web site: *http://www.devbusiness.com*; e-mail: *dbsubscribe@un.org*); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, NW., Washington, DC 20006, USA (Web site: *http://www.dgmarket.com*).

[17] Also see Paragraph 2.44 of Section 1.A of these Rules.

[18] The format of the bid security shall be in accordance with what was approved by MCC with its approval of MCA-Namibia's Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the Republic of Namibia, it shall have a correspondent financial institution located in the Republic of Namibia to make it enforceable.

period of the bids, in order to provide reasonable time for MCA-Namibia to act if the security is to be called. Bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, MCA-Namibia may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for a period of time from being eligible for bidding in any contract with MCA-Namibia.

Language

2.15.1 All advertisements for contracts and notices of contract awards whether posted at MCA-Namibia's Web site, at dgMarket, or UNDB Online shall be posted in English.

2.15.2 For all contracts, the solicitation documents as well as the documents responding to these solicitations, including the proposals, shall be prepared in English. All contracts shall be written in English and this language shall govern contractual relations between MCA-Namibia and the contractor.

Clarity of Bidding Documents

2.16 Bidding documents shall be so worded as to permit international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

2.17 The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.[19]

2.18 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. MCA-Namibia shall provide reasonable access to Project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with representatives of MCA-Namibia to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy included in the record of the procurement. Any additional information, clarification, correction of errors, or modifications of bidding documents shall be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline shall be extended. MCC shall receive a copy of modifications to the bidding documents and be consulted for issuing its approval when the contract is subject to prior review by MCC.

Standards

2.19 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, MCA-Namibia shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified.

In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

Use of Brand Names

2.20 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words ''or equivalent'' shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

Pricing

2.21 Bids for goods shall be invited on the basis of (a) CIP[20] for all goods manufactured abroad, including those previously imported, and (b) EXW[21] for goods manufactured or assembled in the Republic of Namibia, plus the cost of inland transportation and insurance to the place of destination, subject to any modifications set forth in the solicitation documents. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.[22] Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of ''supply and installation'' contracts, the bidder shall be required to quote for these services, in addition.

2.22 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc.

2.23 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works. Bidders shall be allowed to obtain all inputs from any eligible source so that they may offer their most competitive bids.

Price Adjustment

2.24 Bidding documents shall state either (a) that bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions might be included in contracts which extend beyond eighteen months with the approval of MCC.

2.25 Prices may be adjusted by the use of a prescribed formula (or

[19] See § 2.52.

[20] Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of CIP.

[21] Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of EXW.

[22] See Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Rules.

formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

Transportation and Insurance

2.26 Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States dollars or local currency of the Republic of Namibia depending upon the currency of the contract. For works, a contractor's ''all risk'' form of policy usually shall be specified. For large Projects with several contractors on a site, a ''wrap up'' or total Project insurance arrangement may be obtained by MCA-Namibia, in which case MCA-Namibia shall seek competition for such insurance.

2.27 Reserved.

Currency Provisions

2.28 Bidding documents shall state the currency or currencies in which bidders are to state their prices. All bids are to be denominated and paid only in United States dollars, the local currency of the Republic of Namibia, or a combination of the two as stated in the bidding documents. No other currency is permitted.

Currency of Bid

2.29 The bidding documents shall caution bidders that the bid price must be expressed in the currency requested. The requested currency may be either United States dollars, the currency of the Republic of Namibia, or a combination of the two. Bids may not be requested or expressed in any other currency.

2.30 Reserved.

Currency Conversion for Bid Comparison

2.31 The bid price is the sum of all payments in United States dollars or the currency of the Republic of Namibia as applicable. For the purpose of comparing prices, bid prices shall be converted to either one of the two currencies as selected by MCA-Namibia and stated in the bidding documents. MCA-Namibia shall make this conversion by using the forward or selling (exchange) rates, as appropriate, for those currencies quoted by an official, public source (such as the Bank of Namibia), by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiration of the period of bid validity.

Currency of Payment

2.32 Payment of the contract price shall be made in the currency (or currencies) as stated in the bidding documents.

2.33 Reserved.

Terms and Methods of Payment

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works and non-consultant services. The contract shall provide for the payment of interest if payment is delayed due to the fault of MCA-Namibia or its agents beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

(a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation, commissioning and testing, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract. In major contracts for goods and plants, provision shall be made for partial payments for work done and, in contracts of long duration, for partial payments during the period of manufacture or assembly.

(b) Contracts for works shall provide in appropriate cases for partial payments for work done in furtherance of contract performance and reasonable retention amounts to be released upon compliance with the contractor's obligations under contract.

2.35 Any payment for work done in furtherance of the contract shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other payments to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. Payment made in advance of work done, including payment made upon signature of a contract for goods or works (advance payments) requires prior approval of MCC and a commitment of a security guarantee or bond in the amount of the advance payment. The bidding documents shall specify the arrangements for any security required for advance payments.

2.36 Bidding documents shall specify the payment method. Terms of payment may not be used as an evaluation criterion and may not affect the bid evaluation.

Alternative Bids

2.37 The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered and the basis on which alternative bids shall be evaluated.

Conditions of Contract

2.38 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of MCA-Namibia and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by MCA-Namibia, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods, works or non-consultant services to be procured and the location of the Project shall be included.

Performance Security

2.39 Bidding documents for works shall require a security in an amount sufficient to protect MCA-Namibia in case of breach of contract by the contractor. This security shall be provided in an appropriate form and amount, as specified by MCA-Namibia in the bidding document.[23] The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the

[23] The format of the performance security shall be in accordance with the Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the Republic of Namibia, it shall have a correspondent financial institution located in the Republic of Namibia to make it enforceable.

defects liability or maintenance period up to final acceptance by MCA-Namibia.

2.40 In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a security to protect against nonperformance of the contract and to cover warranty obligations. The security shall be reasonable in amount.

Liquidated Damages and Bonus Clauses

2.41 Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods, works or non-consultant services to meet performance requirements would result in extra cost or loss of revenue or loss of other benefits to MCA-Namibia. With prior approval of MCC, provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to MCA-Namibia.

Force Majeure

2.42 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

Applicable Law and Settlement of Disputes

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in the Republic of Namibia with the possibility for international arbitration in the cases where the parties so agree. In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision might also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

C. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.44 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the Project, the magnitude and complexity of the contract, and the period of advanced notice provided by the General Procurement Notice. Where large works or complex items of equipment are involved, the period shall be long enough to enable prospective bidders to conduct investigations before submitting their bids. In such cases, MCA-Namibia may convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. MCA-Namibia may also use electronic systems permitting bidders to submit bids by electronic means, provided MCC is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of bids submitted, uses an electronic signature system or equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and MCA-Namibia. In this case, bidders shall continue to have the option to submit their bids in hard copy. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Bid Opening Procedures

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly [24] thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. MCA-Namibia shall open all bids at the stipulated time and place. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online, when electronic bidding is used) and the general public, at the discretion of MCA-Namibia. The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) and recorded when opened and a copy of this record shall be sent to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read aloud at bid opening, shall not be considered.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in Paragraphs 2.63 and 2.64 of Section 1.A of these Rules, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. MCA-Namibia shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy and/or by an electronic system satisfactory to MCC.[25]

Confidentiality

2.47 After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of contract award.

Examination of Bids

2.48 MCA-Namibia shall ascertain whether the bids (a) meet the eligibility requirements specified in Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Rules, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in Paragraph 2.14 of Section 1.A of these Rules, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.[26]

Evaluation and Comparison of Bids

2.49 The purpose of bid evaluation is to determine the cost and benefits of each bid in a manner that permits a comparison to be made. Subject to Paragraph 2.58 of Section 1.A of these Rules, the bid best meeting the evaluation criteria and other non-price factors (including, but not limited to, warranties and delivery periods),[27] but not necessarily the lowest submitted price, shall be selected for award.

2.50 The bid price read aloud at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable nonmaterial deviations or reservations.

2.51 The evaluation and comparison of bids shall be on CIP prices for the supply of imported goods [28] and EXW

[24] To allow sufficient time to take the bids to the place announced for public bid opening.

[25] See Paragraph 2.44 of Section 1.A of these Rules.

[26] See Paragraph 2.50 of Section 1.A of these Rules regarding corrections.

[27] See Paragraph 2.52 of Section 1.A of these Rules.

[28] MCA-Namibia may ask for prices on a CIF basis (and bids compared on that same basis) only when

prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Republic of Namibia, together with prices for any required installation, training, commissioning, and other similar services.[29]

2.52 Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors may be taken into consideration including, among others, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the bidding documents.

2.53 Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to MCA-Namibia may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance and MCC has granted prior approval.

2.54 MCA-Namibia shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract.

Domestic Preferences

2.55 Application of domestic preferences for nationality or local content shall not be permitted.

2.56 Reserved.

Extension of Validity of Bids

2.57 MCA-Namibia shall use best efforts to complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

Postqualification of Bidders

2.58 If bidders have not been prequalified, MCA-Namibia shall determine whether the bidder whose bid has been determined to best meet the evaluation criteria, subject to Section 2.49, has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, MCA-Namibia shall make a similar determination and also confirm eligibility of the next-lowest evaluated bidder.

Award of Contract

2.59 MCA-Namibia shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (a) to be substantially responsive to the bidding documents and (b) to best meet the evaluation criteria, subject to Section 2.49.[30] A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Publication of the Award of Contract

2.60 After the award of contract, MCA-Namibia shall post at UNDB Online, at dgMarket and at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) the results, identifying the procurement, the name of the winning bidder and the price, duration, and summary scope of the contract. The same information shall be sent to all bidders who have submitted bids. The posting at UNDB Online and at dgMarket shall be done monthly and at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English.

Rejection of All Bids

2.61 Bidding documents usually provide that MCA-Namibia may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive or when bid prices are unreasonable or are substantially higher than existing budget. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid if the bid was satisfactorily advertised and prices are reasonable in comparison to market values. MCA-Namibia may, after approval by MCC, reject all bids. If all bids are rejected, MCA-Namibia shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

2.62 If the rejection of all bids is due to lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the bids being non responsive, new bids may be invited from the initially prequalified firms, or with approval of MCC from only those that submitted bids in the first instance.

2.63 All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds MCA-Namibia pre-bid cost estimates by a substantial margin, MCA-Namibia shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, MCA-Namibia may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract

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the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. CIP can be used for any mode of transport, including sea and multimodal transport.

[29] The evaluation of bids shall not take into account: (a) Customs duties and other taxes levied on imported goods quoted CIP (which are excluded of custom duties); (b) sales and similar taxes levied in connection with the sale or delivery of the goods.

[30] Referred to as ''lowest evaluated bidder'' and ''lowest evaluated bid,'' respectively.

documents generally will require rebidding.

2.64 The prior approval of MCC shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder. Within two weeks of the rejection of all bids, MCA-Namibia shall post at dgMarket and MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reason for cancelling the procurement. The same information shall be sent to all bidders who have submitted bids. All such postings shall be in English.

Debriefing

2.65 The bidding documents shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, may request an explanation from MCA-Namibia. MCA-Namibia shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of MCA-Namibia. The requesting bidder shall bear all the costs of attending such a debriefing.

D. Modified CB

2.66 Reserved.
2.67 Reserved.

Procurement of Commodities

2.68 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favorable market conditions and to keep inventories low. A list of prequalified bidders may be drawn up to whom periodic invitations are issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. Bid validities shall be as short as possible. Bid prices must be denominated and paid in either United States dollars or the local currency of the Republic of Namibia. The currency shall be specified in the bidding document. Bidding documents may permit telexed or faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities valid over a specified period of time have been submitted by prequalified bidders. Standard contract conditions and forms consistent with market practices shall be used.

III. Other Methods of Procurement

General

3.1 This Section describes the methods of procurement that can be used where CB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate.[31] Paragraphs 3.2 to 3.7 of Section 1.A of these Rules describe the generally used methods in descending order of preference and the remaining paragraphs describe the methods used in specific circumstances.

Limited Bidding (''LB'')

3.2 Limited Bidding is essentially CB by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there are only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full CB procedures. Under LB, MCA-Namibia shall seek bids from a list of potential suppliers or contractors broad enough to assure competitive prices, such list to include all suppliers or contractors when there are only a limited number. In all respects other than advertisement, CB procedures shall apply, including the publication of the contract award as indicated in Paragraph 2.60 of Section 1.A of these Rules.

3.3 Reserved.
3.4 Reserved.

Shopping

3.5 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods) or from several contractors (in the case of civil works), with a minimum of three, to assure competitive prices, and is an appropriate method for procuring readily available off the shelf goods or standard specification commodities of small value, or simple civil works of small value. (Small value is defined as procurements valued at less than US$200,000 in the aggregate from one contractor). Requests for quotations shall indicate the description and quantity of the goods or specifications of works or non-consultant services, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means. The evaluation of quotations shall follow the same principles as of Competitive Bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

Direct Contracting

3.6 Direct contracting is contracting without competition (single-source) and may be an appropriate method under the following circumstances:

(a) An existing contract for goods, works or non-consultant services, awarded in accordance with procedures acceptable to MCC, may be extended, within reasonable limits, for additional goods, works or non-consultant services of a similar nature. MCC shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract.

(b) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to MCC.

(c) The required equipment is proprietary and obtainable only from one source.

(d) The contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.

(e) In exceptional cases, such as in response to natural disasters.

(f) The value of the contract is under US$2,000.

3.7 For all procurements valued above US$2,000, MCA-Namibia, after the contract signature, shall post at MCA-Namibia's Web site or such appropriate Web site designated by MCA-Namibia and approved by MCC, at dgMarket and at UNDB Online the name of the contractor, price, duration, and summary scope of the direct contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

Force Account

3.8 Force Account, that is, construction by the use of the government's own personnel and

[31] Contracts shall not be divided into smaller units in order to make them less attractive for CB procedures; any proposal to divide a contract into smaller packages shall require the prior approval of MCC.

equipment,[32] may be the only practical method for constructing some kinds of works. The use of Force Account may be justified where:

(a) Quantities of work involved cannot be defined in advance;

(b) Works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;

(c) Work is required to be carried out without disrupting ongoing operations;

(d) Risks of unavoidable work interruption are better borne by MCA Entity than by a contractor; and

(e) There are emergencies needing prompt attention.

3.9 Reserved.

Procurement Agents and Fiscal Agents

3.10 MCA-Namibia may wish (or be required by MCC) to employ, as their agents, firms specializing in handling procurement and/or financial management services. Such agents shall be selected following these Rules (or such other procedures as MCC may approve) and the procedures set out in the RFP requesting such agent services. The procurement agent shall follow all the procurement procedures provided for in the Compact, any agreement supplemental to the Compact (each a ''*Supplemental Agreement*''), and these Rules, conduct procurement in conformance with a Procurement Plan approved by MCC, use appropriately the Standard Solicitation Documents as approved by MCC, follow review procedures, and properly document the procurement activity. Management contractors may be employed in a similar manner for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency situations, or where large numbers of small contracts are involved.

Inspection Agents

3.11 Preshipment inspection and certification of imports is one of the safeguards MCA-Namibia may choose to adopt, particularly for any large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through CB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through CB may additionally be subjected to price verification. The inspection agents ordinarily are paid for on a fee basis levied on the value of the goods.

3.12 Reserved.

Procurement Under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements

3.13 Where MCC is participating in funding the cost of a Project procured under a BOO/BOT/ BOOT,[33] concessions or similar types of private sector arrangements, either of the following procurement procedures shall be used, as provided for in the Compact including the Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC:

(a) The concessionaire or entrepreneur under the BOO/BOT/ BOOT or similar type of contract [34] shall be selected under CB procedures acceptable to MCC, which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for MCA-Namibia or purchaser by the facility, and the period of the facility's depreciation; or

(b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in Subparagraph (a) above, the goods, works, consultant or non-consultant services required for the facility and to be funded by MCC shall be procured in accordance with CB procedures defined in Sub-Section 1.A. II.

Performance Based Procurement (''Performance Based Procurement'' or ''Output Based Procurement'')

3.14 Performance Based Procurement,[35] also called Output Based Procurement, refers to competitive procurement processes resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need both in terms of quality, quantity and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments (or retentions) may be made for lower-quality levels of outputs and, in certain cases, premiums may be paid for higher quality levels of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the contractor. The contractor is free to propose the most appropriate solution, based on mature and well proven experience and shall demonstrate that the level of quality specified in the bidding documents will be achieved.

3.15 Performance Based Procurement can involve: (a) The provision of services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation) and commissioning of a facility to be operated by MCA-Namibia; or (c) design, supply, construction (or rehabilitation) of a facility and provision of services for its operation and maintenance for a defined period of years after its commissioning.[36] For the cases where design, supply and/or construction are required, prequalification is normally required and the use of Two-Stage Bidding as indicated in Paragraph 2.6 of Section 1.A of these Rules will usually apply.

3.16 Reserved.

3.17 Reserved.

Appendix 1: Review by MCC of Procurement Decisions

Procurement Plans

1. MCC shall review procurement arrangements proposed by MCA-Namibia in the Procurement Plan for its conformity with the Compact and these Rules. MCA-Namibia shall update the Procurement Plan at least on a semi-annual basis. Any amendments proposed to the Procurement Plan shall be submitted to MCC for prior approval.

Prior Review

2. The thresholds for review of procurement decisions prior to award of a contract and any modification to such contracts are set out in Attachment 1 of these Rules.

[32] A government-owned construction unit that is not managerially and financially autonomous shall be considered a force account unit. ''Force account'' is otherwise known as ''direct labor,'' ''departmental forces,'' or ''direct work.''

[33] BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer.

[34] For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems.

[35] The use of Performance Based Procurement in MCC funded projects should be the result of the satisfactory technical analysis of the different options available and should be subject to prior approval by MCC for incorporation into the Procurement Plan.

[36] Examples of such type of procurement are: (i) For the case of procurement of services: Provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc.; (ii) for the case of procurement of a facility: Design, Procurement, Construction, and Commissioning of a thermal power plant to be operated by a grantee; (iii) for the case of procurement of a facility and services: Design, Procurement, Construction (or Rehabilitation) of a road and operation and maintenance of the road for 5 years after construction.

Post Review

3. MCA-Namibia shall retain all documentation with respect to each contract during implementation of the Compact and up to five years after the expiration or termination of the Compact. This documentation is subject to examination by MCC, its oversight agencies and by its consultants and should include, but is not to be limited to, the signed original of the contract, the analysis of the respective proposals, recommendations for award, the record of MCC approvals, and the record of any bid challenge. MCA-Namibia shall also furnish such documentation to MCC upon request. If MCC determines that the goods, works or non-consultant services were not procured in accordance with the agreed procedures, as reflected in the Compact including the Supplemental Agreements and further detailed in the Procurement Plan approved by MCC, or that the contract itself is not consistent with such procedures, it may declare misprocurement as established in Paragraph 1.12 of Section 1.A of these Rules. MCC shall promptly inform MCA-Namibia of the reasons for such determination.

Appendix 2

Reserved.

Appendix 3: Guidance to Bidders

Bidders may learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the MCC program in the Republic of Namibia at the Web site established by MCA-Namibia or such other appropriate Web site designed by MCA-Namibia and approved by MCC.

Section 1.B. Program Procurement Rules: Procurement of Consultants and Consultant Services

I. Introduction

Purpose

1.1 The principles, rules and procedures set out in this Section 1.B of these Rules shall govern the conduct and administration of the procurement of the consultants and consultant services that need to be acquired to implement the Projects under the Compact.

1.2 Reserved

1.3 For the purpose of these Rules, the term consultants includes a wide variety of entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, multinational organizations, investment and merchant banks, universities, research institutions, nongovernmental organizations, and individuals.[37]

General Considerations

1.4.1 MCA-Namibia is responsible for implementing the Projects, and therefore for selecting the consultants, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following Procurement Principles shall generally guide the application of these Rules:

(a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure consultant services;

(b) Solicitations for consultant services shall be based upon a clear and accurate description of the consultant services to be acquired;

(c) Contracts shall be awarded only to qualified and capable consultants that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and

(d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure the consultant services.[38]

1.4.2 MCA-Namibia shall ensure that all the procurements for consultant services in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC funding shall comply with these Procurement Principles.

1.5 MCC considers that, in the majority of cases, these considerations can best be addressed through competition among qualified firms in which the selection is based on the quality of the proposal and the cost of the services to be provided. Sub-Sections 1.B.II and III of these Rules describe the different methods of selection of consultants and the circumstances in which they are appropriate. Since Quality and Cost Based Selection (''QCBS'') is the most commonly recommended method, Sub-Section 1.B.II of these Rules describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases; therefore, Sub-Section 1.B.III describes other methods of selection and the circumstances in which they are more appropriate.

1.6 The particular methods to be followed for the selection of consultants under the Compact shall be set out in the Procurement Plans.

Applicability of Rules

1.7 The consultant services to which Section 1.B of these Rules apply are of an intellectual and advisory nature. This Section of these Rules does not apply to other types of services in which the physical aspects of the activity predominate (for example, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of performance of measurable physical output).[39]

1.8 Reserved

Conflict of Interest

1.9 Consultants shall provide professional, objective, and impartial advice and at all times hold the interests of MCA-Namibia paramount, without any consideration for future work, and, in providing advice, consultants shall avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of MCA-Namibia. Without limitation on the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

(a) Conflict between consultant activities and procurement of goods, works or non-consultant services: A firm that has been engaged by MCA-Namibia to provide goods, works, or non-consultant services for a Project, and each of its affiliates, shall be disqualified from providing consultant services related to those goods, works or non-consultant services. Conversely, a firm hired to provide consultant services for the preparation or implementation of a Project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or non-consultant services resulting from or directly related to the firm's consultant services for such preparation or implementation.

(b) Conflict among consultant assignments: Neither consultants (including their personnel and sub-consultants) nor any of their affiliates

[37] See Paragraphs 3.15–3.20 of Section 1.B of these Rules for particular types of consultants. Individual consultants are covered in Sub-Section 1.B.V.

[38] These four principles are set out in Section 3.6 of the Compact.

[39] As to these latter services, Section 1.A of these Rules shall apply.

shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.

(c) Relationships with MCA-Namibia staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of MCA-Namibia staff (or of the Project implementing agency's staff, or of a beneficiary of the Compact) who are directly or indirectly involved in any part of: (i) The preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the selection process and the execution of the contract.

Unfair Competitive Advantage

1.10 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consultant services related to the assignment in question. To that end, MCA-Namibia shall make available to all the short-listed consultants, together with the Request for Proposals (RFP), all information that would in that respect give a consultant a competitive advantage.

Eligibility

1.11 To foster competition MCC permits firms and individuals from almost all countries [40] to offer consultant services for MCC-funded Projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's or individual's capability to fulfill the contract in question. However,

(a) Consultants may be excluded if: (i) As a matter of law or official regulation, the Republic of Namibia prohibits commercial relations with the consultant's country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the consultant services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Republic of Namibia prohibits any payments to a particular firm or person or for particular goods by such an act of compliance, that the firm or individual may be excluded.

(b) Government-owned enterprises in the Republic of Namibia may participate if they are receiving no state subsidy and can demonstrate that they do not receive a cross-subsidy of income as a result of statutory powers.

(c) As an exception to (b), government-owned universities or research centers may participate.

(d) Government officials and civil servants may not be hired under consultant contracts, either as individuals or as members of a team of a consultant firm.

(e) A firm declared ineligible by the World Bank for any reason, including in accordance with The World Bank Group Anti-Corruption policies [41] shall be ineligible to be awarded a MCC-funded contract during the period of time the firm is sanctioned by The World Bank.

(f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the United States Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies, including under any then-existing anti-terrorist policies, shall be excluded from procurements awarded under the Compact. Without limiting the foregoing, this would remove from eligibility any procurement from a country or from a firm that is organized in or has its principle place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.[42]

Advance Contracting and Retroactive Financing

1.12 The process of identifying and selecting consultants to implement projects funded under the Compact before the Compact enters into force is referred to as advance contracting. Similarly, payments made under a contract that is signed prior to the Compact entering into force for which MCA-Namibia would seek reimbursement from MCC is known as retroactive financing. MCA-Namibia will not engage in any advance contracting or be entitled to any retroactive financing, without the prior approval of MCC.

Associations Between Consultants

1.13 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If MCA-Namibia employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the solicitation documents, including Requests for Proposals, are issued, any association in the form of joint venture or sub-consultancy among short-listed firms, if applicable, shall be permissible only with the approval of MCA-Namibia, unless specifically permitted in the terms of the Request for Proposals. MCA-Namibia shall not require consultants to form associations with any specific firm or group of firms.

MCC Review, Assistance, and Monitoring

1.14 MCC reviews the hiring of consultants by MCA-Namibia to satisfy itself that the selection process is carried out in accordance with the provisions of these Rules. The thresholds for MCC review are described in Attachment 1 of these Rules.

1.15 MCC does not furnish a short list or a long list [43] of firms or individuals to MCA-Namibia. However, if MCA-Namibia undertakes a shortlisting procedure before inviting proposals, the record of the shortlisting procedure together with the final short list shall be submitted to MCC for approval before MCA-Namibia issues the RFP if the estimated value of the anticipated contract exceeds the thresholds in Attachment 1 of these Rules.

1.16 MCA-Namibia shall supervise the performance of the consultants and ensure that they carry out the assignments in accordance with the contract. Without assuming the responsibilities of MCA-Namibia or the consultants, MCC shall monitor the work as necessary to satisfy itself that it

[40] Firms and individuals from any country subject to sanction or restriction by law or policy of the United States are not eligible to compete for MCC-funded contracts. See Sub-paragraph 1.11(f) below.

[41] For purposes of this Sub-paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants, and in the Anti-corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions.

[42] As of July 2008, this list includes Cuba, Iran, North Korea, Sudan and Syria.

[43] Short list: see Paragraphs 2.6, 2.7 and 2.8 of 1.B of these Rules; Long list: a preliminary list of potential firms from which the short list would be established.

is being carried out according to appropriate standards and is based on acceptable data. As appropriate, MCC may take part in discussions between MCA-Namibia and the consultants and, if necessary, may help MCA-Namibia in addressing issues related to the assignment. If a significant portion of Project preparation work is being carried out in the consultants' home offices, MCC staff may, with approval of MCA-Namibia, visit these offices to review the consultants' work.

Misprocurement

1.17 MCC does not fund expenditures for consultant services if the consultants or consultant services selected have not been contracted in accordance with the agreed provisions as detailed in the Compact and Supplemental Agreements, these Rules and the approved Procurement Plans.[44] In such cases, MCC will declare misprocurement and cancel that portion of the Compact allocated to the services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by MCA-Namibia or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.18 MCA-Namibia shall use the following language when referring to MCC in procurement documents:

The United States of America, acting through the Millennium Challenge Corporation (''MCC'') and the Republic of Namibia (the ''Government'') have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in the Republic of Namibia (the ''Compact'') in the amount of [Insert amount of Compact] US$ (''MCC Funding''). MCA-Namibia on behalf of the Government intends to apply a portion of the proceeds of MCC Funding to eligible payments under this contract. Payments by MCA-Namibia will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and MCA-Namibia shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

[44] See Paragraph 1.24.1, 1.24.2, and 1.24.3 of Section 1.B of these Rules.

Training or Transfer of Knowledge

1.19 If the assignment includes an important component for training or transfer of knowledge to MCA-Namibia staff or national consultants, the TOR shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

Language

1.20 All advertisements for contracts and notices of contract awards, whether posted at MCA-Namibia's Web site, at dgMarket, or UNDB Online, shall be posted in English.

1.21 For all contracts, the solicitation documents as well as the documents responding to these solicitations, including the proposals, shall be prepared in English. All contracts shall be written in English and this language shall govern contractual relations between MCA-Namibia and the consultant.

Fraud and Corruption

1.22 MCC requires that MCA-Namibia (and other beneficiaries of MCC funding), as well as consultants and their subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following provisions shall apply.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) ''Corrupt practice'' means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA-Namibia and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (aa) the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*) (''FCPA''), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (bb) any applicable law in the Republic of Namibia;

(ii) ''Fraudulent practice'' means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(iii) ''Collusive practice'' means a scheme or arrangement between two or more parties, with or without the knowledge of MCA-Namibia, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive MCA-Namibia of the benefits of free and open competition;

(iv) ''Coercive practice'' means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(v) ''Obstructive practice'' means:

(aa) Destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; and

(bb) Acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact; and

(vi) ''Prohibited practice'' means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) and Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the ''General Provisions Annex'' that will be made a part of MCC-funded contracts and may be found on the MCC Web site at *http://www.mcc.gov/guidance/compact/general_provisions.pdf*.

(b) MCA-Namibia will reject a proposal (and MCC will deny approval of a proposal for contract award) if it determines that the consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for the contract in question.

(c) MCC has the right to cancel the portion of MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices during the selection process or the execution of a MCC-funded contract, without MCA-Namibia having taken timely and appropriate action

satisfactory to MCC to remedy the situation.

(d) MCC and MCA-Namibia have the right to sanction a consultant, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either MCA-Namibia or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for, or in executing, such a contract.

(e) MCC and MCA-Namibia have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a consultant to permit MCA-Namibia, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a proposal or performance of a MCC-funded contract and to have them audited by auditors appointed by MCC or MCA-Namibia with the approval of MCC.

1.23 To the extent required by Namibian law, MCA-Namibia shall introduce, into bid forms for large contracts funded by MCC, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the solicitation documents. In the event such an undertaking is not required by Namibian law, MCA-Namibia may introduce the undertaking with the approval of MCC.

Procurement Plan

1.24.1 MCA-Namibia shall prepare periodic procurement plans that are updated at least semi-annually, for acquiring consultant services needed to implement the Compact (''Procurement Plan''). Each Procurement Plan shall be adopted by the governing body of MCA-Namibia and shall be submitted to MCC for its approval. Each Procurement Plan,[45] typically covering a six (6) month period, (a) lists the particular contracts for the consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identifies the proposed method of procurement and selection procedure for such contracts as determined according to the rules set out in these Rules; and (c) sets forth the estimated value for each consultant contract.

[45] When goods, works and non-consultant services also need to be procured, the Procurement Plan must also include such procurements in accordance with the requirements at Section 1.A, Paragraphs 1.16.1, 1.16.2, and 1.16.3 of these Rules.

1.24.2 MCA-Namibia shall ensure that all consultant services shall be procured using the procurement method and selection procedure approved in each Procurement Plan. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements.

1.24.3 MCA-Namibia shall not initiate any procurement action that is a substantial deviation from the applicable adopted and approved Procurement Plan without the prior approval of MCC. If MCA-Namibia determines that such a deviation is necessary or appropriate, MCA-Namibia shall submit a request to MCC for its approval of an amended Procurement Plan. If approved by MCC, MCA-Namibia shall comply with any instructions contained in the MCC approval, including any publication requirements. Any substantial deviation from a Procurement Plan as approved and adopted shall be submitted to the governing body of MCA-Namibia for adoption of the amended Procurement Plan.

II. Quality and Cost Based Selection

The Selection Process

2.1 QCBS uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

2.2 The selection process includes the following steps unless MCC approves a modification in the procedure that is justified under the circumstances of a particular procurement:

(a) Preparation of the Terms of Reference;

(b) Preparation of a cost estimate and the budget;

(c) Advertising;

(d) Preparation of the short list of consultants; (This step is not mandatory. MCA-Namibia may at its discretion issue the Request for Proposals to all consultants expressing interest in the procurement.)

(e) Preparation and issuance of the Request for Proposals which should include: the Letter of Invitation; Instructions to Consultants; the Terms of Reference and the proposed draft contract;

(f) Receipt of proposals;

(g) Evaluation of technical proposals: consideration of quality;

(h) Public opening of financial proposals;

(i) Evaluation of financial proposals;

(j) Final evaluation of quality and cost; and

(k) Negotiations and award of the contract to the selected firm.

Terms of Reference (''TOR'')

2.3 MCA-Namibia shall be responsible for preparing the TOR for the assignment. The TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. The TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. The TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). It shall also list criteria that will be used to evaluate the bids. However, the TOR should not be too detailed or inflexible, so as to prevent competing consultants from proposing their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The respective responsibilities of MCA-Namibia, the implementing entity (if relevant) and the consultant should be defined clearly in the TOR.

Cost Estimate (Budget)

2.4 Preparation of a well thought-through cost estimate is essential if MCC funding is to be managed properly. The cost estimate shall be based on MCA-Namibia's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (e.g. vehicles and laboratory equipment).

Advertising

2.5.1 On at least a semi-annual basis, MCA-Namibia shall publicize in the General Procurement Notice (GPN) the procurements planned for consultant services for the upcoming period as identified in the adopted Procurement Plan which was approved by MCC. The General Procurement Notice shall be in the form acceptable to MCC and shall include information derived from the Procurement Plan and the name, telephone (or fax) number, and address of the MCA-Namibia agent responsible for procurement and the address of the

Web site(s) where Specific Procurement Notices will be posted. If known, the scheduled date for availability of solicitation documents for each procurement should be indicated. Such solicitation documents shall not be released to the public earlier than the date of publication of the General and Specific Procurement Notices. The General Procurement Notice shall be advertised in a manner to provide reasonable notice of planned procurements to potential consultants. Advertisement of the General Procurement Notice shall include posting in English at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC), dgMarket and UNDB Online.[46] MCA-Namibia shall also publish the General Procurement Notice in a newspaper of wide circulation in the Republic of Namibia and in such other media outlets as appropriate or as requested from time to time by MCC.

2.5.2 Request for Expressions of Interest (EOI), Request for Proposals (RFP) or Request for Consultant Qualifications (RCQ) shall be advertised as Specific Procurement Notices (SPN). For contracts valued less than or equal to US$500,000, such requests shall be published in at least one newspaper of national circulation in the Republic of Namibia and posted at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC). For contracts valued over US$500,000, MCA-Namibia must also post the Specific Procurement Notice at UNDB Online and at the dgMarket Web site. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. The text of the notice, whether an EOI, an RFP or an RCQ may be subject to review by MCC. Notification shall be given in sufficient time to enable prospective consultants to obtain information, or the relevant solicitation documents, and prepare and submit their responses, taking into consideration the estimated value of the contract and period of advance notice given with the General Procurement Notice.[47]

[46] UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163–5850, USA (Web site: *http://www.devbusiness.com*; e-mail: *dbsubscribe@un.org*); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, NW., Washington, DC 20006, USA (Web site: *http://www.dgmarket.com*).

[47] Also see Paragraph 2.13 of Section 1.B of these Rules.

Short List of Consultants

2.6 At its discretion, MCA-Namibia may advertise for expressions of interest and invite only short-listed firms or individuals to submit proposals or qualifications as appropriate for the selection procedure chosen for the particular procurement, or MCA-Namibia may begin the procurement with an open request for proposals or consultation qualifications. When MCA-Namibia chooses to begin a procurement with a shortlisting procedure, MCA-Namibia is responsible for preparation of the short list. There is no maximum limit to the number of firms that may be short-listed and care should be taken not to eliminate any qualified participants from competing for the consultant contract. Consideration for shortlisting must be given to all firms or organizations—national and international—expressing interest and possessing the relevant qualifications. The method for developing a short list shall be fair and objective according to pre-announced criteria.

2.7 Reserved.

2.8 Selection based upon Consultants Qualifications is generally used for small assignments.[48]

Preparation and Issuance of the Request for Proposals (''RFP'')

2.9 The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. MCA-Namibia shall use the applicable Standard Proposal Documents, as approved byMCC pursuant to Part 3 of these Rules, as may be modified to address project-specific conditions, subject to MCC approval when the change is material. MCA-Namibia may use an electronic system to distribute the RFP, provided that MCC is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not unfairly restrict the access of consultants to the RFP.

Letter of Invitation (''LOI'')

2.10 The LOI shall state the intention of MCA-Namibia to enter into a contract for the provision of consultant services, the source of funds, the details of MCA-Namibia and the date, time, and address for submission of proposals.

[48] Dollar thresholds defining ''small'' shall be determined in each case, taking into account the nature and complexity of the assignment, but generally will not exceed US$200,000.

Instructions to Consultants (''ITC'')

2.11 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and methodology and their relative weights and the minimum passing quality score. The ITC may indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or may provide the total budget, but neither item of information is required. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, MCC review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITC is provided in Appendix 2 of this Section 1.B.

Contract

2.12 Sub-Section 1.B.IV of these Rules briefly discusses the most common types of contracts. MCA-Namibia shall use an appropriate form of contract acceptable to MCC. Any changes to standard conditions shall be introduced generally through the forms and procedures defined in the Standard Proposal Documents. When the Standard Proposal Documents are not appropriate (for example, for preshipment inspection and procurement services), MCA-Namibia shall use other contract forms acceptable to MCC.

Receipt of Proposals

2.13 MCA-Namibia shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, the value of the contract, the difficulty of preparing a technical proposal and the duration of the advance notice given with posting of the General Procurement Notice. During this interval, the firms may request clarifications about the information provided in the RFP. MCA-Namibia shall provide these clarifications in writing and copy them to all firms either registered or on the short list (who intend to submit proposals). If necessary, MCA-Namibia shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposals shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be

submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance or legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be properly secured until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened after the time for protest has expired. MCA-Namibia may use electronic systems permitting consultants to submit proposals by electronic means, provided MCC is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and MCA-Namibia. In this case, consultants shall continue to have the option to submit their proposals in hard copy.

Evaluation of Proposals: Consideration of Quality and Cost

2.14 The evaluation of the proposals shall be carried out in two stages: 1. quality, 2. cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any required MCC reviews and approvals, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

Evaluation of the Quality

2.15 MCA-Namibia shall evaluate each technical proposal (using a technical evaluation panel of generally three or more technical specialists in the sector), taking into account appropriate evaluation criteria as set out in the RFP. Evaluation criteria may include (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, and (c) the qualifications of the key staff proposed. The relative weight of each criterion shall be disclosed in the RFP. The score for each proposal may be determined based upon the total point system or other methodology for evaluating and comparing responses fairly. When applying the total point method, each criterion is marked on a scale of 1 to 100 according to the specific needs of the assignment.

2.16 MCA-Namibia may divide these criteria into sub-criteria. For example, sub-criteria under methodology might be innovation and level of detail. However, the number of sub-criteria should be limited to the essential. MCC recommends against the use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. If the shortlisting procedure was applied, the weight given to experience can be relatively modest, since this criterion has already been taken into account during the shortlisting process. More weight might be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.17 Evaluation of key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. MCA-Namibia shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consultant firm and the individual proposed. The individuals might be rated in the following three sub-criteria, as relevant to the task:

(a) General qualifications: General education and training, length of experience, positions held, time with the consultant firm as staff, experience in developing countries, and so forth;

(b) Adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and

(c) Experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.18 MCA-Namibia shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

2.19 At the end of the process, MCA-Namibia shall prepare a technical evaluation report of the ''quality'' of the proposals and, in the case of contracts subject to prior review, submit it to MCC for its review and approval. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the Project and its audit.

Evaluation of Financial Proposals

2.20 After the evaluation of quality is completed and the required reviews and approvals have been issued, MCA-Namibia shall inform the consultants who have submitted proposals of the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and the TOR that their financial proposals will be returned unopened after the signature of the contract. MCA-Namibia shall simultaneously notify the consultants that have secured at least the minimum qualifying mark of the date, time, and place set for opening the financial proposals. If the procurement is on the critical path for implementation of the Compact, the opening date may be defined to allow very short notice for consultants to make arrangements to attend the opening of the financial proposals. In such case, MCA-Namibia shall arrange for the record of the proceedings of the opening to be signed by at least two independent witnesses. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened. MCA-Namibia shall also prepare the minutes of the public opening and a copy of this record shall be included in the record of the procurement and provided to all consultants who submitted proposals. A copy of the record shall be sent to MCC when the proposed award is subject to prior review by MCC.

2.21 MCA-Namibia shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the RFP shall require that all proposals be stated in the same currency (local currency of the Republic of Namibia, or US$ or a combination of the two) as required in the RFP. If there is a need to make a conversion between the two allowable currencies, the RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal. Any proposal that deviates from the currency

requirement as stated in the RFP may be rejected as non-responsive.

2.22 For the purpose of evaluation, the financial proposals shall include or exclude local identifiable direct or indirect taxes as instructed in the RFP. The financial proposal shall include all consultants' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. When the total point evaluation methodology is used, the financial proposal with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the financial proposal. The methodology to be used shall be described in the RFP.

Combined Quality and Price Evaluation

2.23.1 The total score shall be obtained by weighing the quality and price scores and adding them. The weight for the financial proposal shall be assigned, taking into account the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and price shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

2.23.2 When the procurement is subject to MCC prior review for proposed award, MCA-Namibia, before inviting the firm obtaining the highest total score for negotiations, shall furnish to MCC for its review and approval a full description of the procurement process including an account of all protests and appeals and other significant problems or defects during the process and a description of how these were resolved.

Negotiations and Award of Contract

2.24 Negotiations shall include discussions of the TOR, the methodology, staffing, inputs by MCA-Namibia and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the procurement process be invalidated. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated into ''Description of Services,'' which shall form part of the contract.

2.25 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

2.26 Financial negotiations shall include clarification of the consultants' tax liability in the Republic of Namibia (if any) to ensure that the contract is consistent with the provisions of the Compact and Supplemental Agreement. As payments under fixed-price contracts are based on work done and delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a fixed-price contract included price as a component, this price shall not be negotiated. In the case of Time-Based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, such as when staff rates offered are much higher than rates typically charged by consultants in similar circumstances for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of MCA-Namibia to ask for clarifications, and, if fees are very high, to ask for change of fees, after due consultation with MCC. Reimbursables are to be paid on actual expenses incurred at cost, subject to limitations set out in MCC Cost Principles, upon presentation of receipts and therefore are not subject to negotiations. However, if MCA-Namibia wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), it should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP. If the contract permits reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles (''*MCC Cost Principles*'') found at the MCC Web site, *http://www.mcc.gov.*

2.27 If the negotiations fail to result in an acceptable contract, MCA-Namibia shall terminate the negotiations and invite the next ranked firm for negotiations. MCA-Namibia shall consult with MCC prior to taking this step. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, MCA-Namibia shall not reopen the earlier negotiations. After negotiations are successfully completed and all required reviews and approvals have been issued, MCA-Namibia shall promptly notify other firms on the short list that they were unsuccessful.

Publication of the Award of Contract

2.28 After the award of contract, MCA-Namibia shall post at UNDB Online, at dgMarket and at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) the results, identifying the procurement, the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals. The posting at UNDB Online and at dgMarket must be done monthly and at MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English.

Debriefing

2.29 In the publication of contract award referred to in Paragraph 2.28 above, MCA-Namibia shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected should request an explanation from MCA-Namibia. MCA-Namibia shall promptly provide the explanation as to why such proposal was not selected, in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant shall bear all the costs of attending such a debriefing.

Rejection of All Proposals, and Re-invitation

2.30 MCA-Namibia will be justified in rejecting all proposals only if all proposals are nonresponsive because they present major deficiencies in complying with the TOR, if they involve prices substantially higher than the original estimate, or if contracting for the services is no longer in the best interest of implementation of the Compact. In the case of a higher price, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with MCC. Before all the proposals are rejected and new proposals are invited, MCA-Namibia shall notify MCC, indicating the reasons for rejection of all proposals, and shall obtain MCC's approval before proceeding with the rejection and the new process. The new process may

include revising the RFP (including the short list) and the budget. These revisions shall be agreed upon with MCC. Within two weeks of the rejection of all proposals, MCA-Namibia shall post at dgMarket and MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reasons for cancellation. The same information shall be sent to all those who have submitted proposals. All such postings shall be in English.

Confidentiality

2.31 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals, or to other persons not officially concerned with the process, until the publication of the award of contract, except as provided in Paragraphs 2.20 and 2.27 of Section 1.B of these Rules.

III. Other Methods of Selection

General

3.1 This Sub-Section 1.B.III describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant [49] provisions of Sub-Section 1.B.II (QCBS) shall apply whenever competition is used.

Quality Based Selection (''QBS'')

3.2 QBS may be appropriate for the following types of assignments:

(a) Complex or highly specialized assignments for which it is difficult to define precise TORs and the required input from the consultants, and for which MCA-Namibia expects the consultants to demonstrate innovation in their proposals;

(b) Assignments that have a high downstream impact and in which the objective is to have the best experts; and

(c) Assignments that can be carried out in substantially different ways, such that proposals will not be comparable.

3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). The RFP may provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, MCA-Namibia shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. MCA-Namibia and the consultant shall then negotiate the financial proposal and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract as described in Paragraph 2.28. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that, after the negotiations are successfully concluded, the financial proposal of only the selected firm is opened and the rest are returned unopened.

Selection Under a Fixed Budget (''*FBS*'')

3.5 This method is appropriate when the assignment is simple and can be precisely defined. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals, which stay within the budget, in separate envelopes. The TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened in public and prices shall be read aloud. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal shall be selected and invited to negotiate a contract. The publication of the Award of Contract shall be as described in Paragraph 2.28.

Least-Cost Selection (''*LCS*'')

3.6 This method is appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well established practices and standards exist. Under this method, a ''minimum'' qualifying mark for the ''quality'' is established. Proposals, to be submitted in two envelopes, are invited. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark [50] are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected and the publication of the award of contract shall be as described in Paragraph 2.28. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on ''price.'' The minimum qualifying mark shall be stated in the RFP.

Selection Based on the Consultants' Qualifications (''*CQS*'')

3.7 This method may be used for small [51] assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, MCA-Namibia shall prepare the TOR, request information on the consultants' experience and competence relevant to the assignment, and select the firm with the most appropriate qualifications and references. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

3.8 The publication of the award of contract shall be as described in Paragraph 2.28.

[49] All provisions of Sub-Section 1.B.II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case. Advertisement is not required when single source selection is used.

[50] This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

[51] Dollar thresholds defining ''small'' shall be determined and justified in writing in each case, taking into account the nature and complexity of the assignment, but shall not exceed US$$200,000 except in exceptional circumstances and specifically approved by MCC.

Single-Source Selection (''*SSS*'')

3.9 Single-source selection of consultants does not provide the benefits of competition with regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of MCA-Namibia and implementation of the Compact and the responsibility of MCC to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

3.10 Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) For tasks that represent a natural continuation of previous work carried out by the firm (see Paragraph 3.11), (b) in emergency cases, such as in response to disasters and for consultant services required during the period of time immediately following the emergency, (c) for very small [52] assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

3.11 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, MCA-Namibia shall ask the initially selected consultant to prepare technical and financial proposals on the basis of the TOR furnished by MCA-Namibia, which shall then be negotiated.

3.12 If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process acceptable to MCC shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. MCC will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

[52] Dollar thresholds defining ''very small'' shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed USD2,000.

3.13 The publication of the award of contract shall be as described in Section 1.B, Paragraph 2.28.

3.14 Reserved.

Selection of Particular Types of Consultants

3.15 Reserved.

3.16 Reserved.

3.17 Procurement Agents and Fiscal Agents. MCA-Namibia may wish (or be required by MCC) to employ, as its agents, firms that specialize in handling procurement and/or financial management services. Such agents shall be selected following these Rules (or such other procedures as MCC may approve) and the procedures set out in the RFP requesting such agent services. When performing procurement agent services, the procurement agent shall follow the procurement procedures outlined in the Compact and Supplemental Agreements, in the Procurement Plan approved by MCC, and in these Rules.

3.18 Inspection Agents. MCA-Namibia may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the Republic of Namibia. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies shall be selected using the procedures set out in the approved and adopted Procurement Plan.

3.19 Banks. MCA-Namibia may require the services of investment and commercial banks, financial firms, and fund managers to implement the Compact. To procure these services, the RFP shall specify clearly how proposals will be presented and how they will be compared.

3.20 Auditors. Auditors typically carry out auditing tasks under well defined TOR and professional standards. MCA-Namibia shall select auditors according to the instructions provided to it by MCC including MCC's Standard Proposal Document for auditor services.

3.21 Service Delivery Contractors. Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, such as nurses and paramedics). The job descriptions, minimum qualifications, terms of employment, selection procedures, and the extent of MCC review of these procedures and documents shall be described in the Project documentation, and the contract shall be included in the Procurement Plan approved by MCC.

IV. Types of Contracts and Important Provisions

Types of Contracts

4.1 Fixed-Price Contract (''Fixed-Price Contract''). Fixed-Price Contracts may take various forms such as lump sum, unit price and percentage fees.[53] Fixed-Price Contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to work done in performance of the contract and to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Fixed-Price Contracts are easier to administer than Time-Based Contracts (defined below) because payments are due on clearly specified outputs.

4.2 Time-Based Contract (''Time-Based Contract''). This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. Time-based contracts need to be closely monitored and administered by MCA-Namibia to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate. For contracts that permit reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles. The costs shall also be subject to audit in accordance with the requirements set out in the Compact and the Supplemental Agreements.

4.3 Reserved.

[53] Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, the cost of the goods procured or inspected or other measure of service such as in the case of Procurement Agent, the value of contracts procured or for Fiscal Agent the amount of funds disbursed. Percentage contracts must be distinguished from cost-plus-percentage-of-cost type contracts which are prohibited as such contracts motivate a supplier, contractor or consultant to increase its profits by increasing cost of performance.

4.4 Percentage Contract. These contracts are commonly used for architectural services. They may also be used for procurement and inspection agents. Percentage Contracts directly relate the fees paid to the consultant to the estimated or actual Project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, Percentage Contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only it if is based on a fixed target cost and covers precisely defined services (for example, not works supervision).

4.5.1 Indefinite Delivery and Indefinite Quantity (''IDIQ'') Contract. These contracts are used when MCA-Namibia needs to have ''on call'' specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain ''advisers'' for implementation of complex Projects, expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more.

4.5.2 Requirements and Blanket Purchase Agreements (''BPA'') Contracts. MCA-Namibia may use these contract types for reoccurring needs.

Important Provisions

4.6 RFPs shall clearly state that firms must express the price for their services in the currency stated in the RFP, which in every case must be either U.S. dollars or the local currency of the Republic of Namibia or a combination thereof. MCA-Namibia may require consultants to state the portion of the price representing costs in the local currency of the Republic of Namibia. Payment under the contract shall be made in the currency or currencies as stated in the RFP.

4.7 Reserved.

4.8 Payment Provisions. Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be set out in the RFP to the extent possible. Payments may be made at regular intervals, milestones and outputs as described in the RFP and agreed in the contract.

4.9 Except as otherwise stated in any related provision of the Compact and Supplemental Agreements, payments shall be made promptly in accordance with the contract provisions. To that end:

(a) Consultants will be paid directly by the Fiscal Agent; and,

(b) The contract shall provide for the payment of interest if payment is delayed beyond the time allowed in the contract due to the fault of MCA-Namibia or its agents; the rate of charges shall be specified in the contract.

4.10 Bid and Performance Securities. Bid and performance securities are not always recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consultant industry without evident benefits, which are eventually passed on to MCA-Namibia. However, they can be useful where Compact implementation would be damaged by poor consultant performance.

4.11 Reserved.

4.12 Conflict of Interest. The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consultant or other activities that conflict with the interest of MCA-Namibia under the contract. The contract shall include provisions limiting future engagement of the consultant or other services resulting from or directly related to the firm's consultant services in accordance with the requirements of Paragraphs 1.9 and 1.10 of Section 1.B of these Rules.

4.13 Professional Liability. The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to MCA-Namibia will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to MCA-Namibia may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case); [54] and (c) any such limitation may deal only with the consultant's liability toward MCA-Namibia and not with the consultant's liability toward third parties.

[54] MCA-Namibia is encouraged to secure insurance for potential risks above these limits.

4.14 Staff Substitution. During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant shall propose other staff of at least the same level of qualifications for approval by MCA-Namibia.

4.15 Applicable Law and Settlement of Disputes. The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in the Republic of Namibia with the possibility for international arbitration where the parties so agree.

V. Selection of Individual Consultants

5.1 Individual consultants are employed on assignments for which (a) teams of personnel are not required, (b) additional outside (home office) professional support is not required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.2 Individual consultants are selected on the basis of their qualifications for the assignment. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B and may, at the discretion of MCA-Namibia, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Consultants do not need to submit proposals but shall be selected through evaluation and comparison of qualifications. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be contracted by MCA-Namibia shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of evidence of knowledge and past experience relevant to the services to be provided and past performance based upon references and recommendations.

5.3 From time to time, permanent staff or associates of a consultant firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Rules shall apply to the parent firm.

5.4 Individual consultants may be selected on a sole-source basis with due justification in exceptional cases such as for: (a) Tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) certain assignments with total expected

duration of less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

Appendix 1: Review by MCC of the Selection of Consultants

Scheduling the Selection Process

1. If required by the thresholds set forth in Attachment 1 of these Rules, MCC shall review the selection process for the hiring of consultants proposed by MCA-Namibia in the Procurement Plan to ensure compliance with the Compact and the Supplemental Agreements. Each Procurement Plan typically covers a period of at least six months and is updated at least semi-annually. Any revisions proposed to the Procurement Plan shall be furnished to MCC for its prior approval.

Prior Review

The thresholds for review of procurement decisions prior to award of a contract and any modification to such contract are set out in Attachment 1 of these Rules.

Post Review

MCA-Namibia shall retain all documentation with respect to each contract for at least five years after the closing date of the Compact for examination by MCC, its auditors, its oversight authorities and independent auditors of MCA-Namibia. This documentation shall include, but shall not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award. For contracts awarded on the basis of single-source selection, documentation shall include the record of justification, the qualifications and experience of the consultants, and the signed original of the contract. MCA-Namibia shall also furnish such documentation to MCC upon request. MCC shall, if it determines that the contract was not awarded in accordance with the agreed procedures as reflected in the Compact, including the Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC, or the contract itself is not consistent with such procedures, promptly inform MCA-Namibia that Paragraph 1.17 (Misprocurement) of Section 1.B of these Rules shall apply and state the reasons for such determination.

Appendix 2: Instructions to Consultants

1. When procuring consultant services, MCA-Namibia shall use MCA-Namibia Standard Solicitation Documents including the Standard Proposal Document accepted by MCC. These documents shall include Instructions to Consultants and TORs providing adequate information on the following aspects of the assignment and the procurement process:

(a) A description of the assignment;

(b) Standard formats for the technical and financial proposals;

(c) The names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;

(d) Details of the selection procedure to be followed, including (i) a description of the two-stage process, if appropriate; (ii) a listing of the technical evaluation criteria and weight given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weight given to quality and price in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;

(e) Estimate of the level of key staff inputs (in staff months) required of the consultants or an indicative value of the proposed contract, but generally not both;

(f) Indication of minimum experience, academic achievement, and so forth, expected of key staff;

(g) Details and status of MCC funding;

(h) Information on negotiations; financial and other information that shall be required of the selected firm during negotiation of the contract;

(i) Deadline for submission of proposals;

(j) Currency(ies) in which the costs of services shall be expressed, compared, and paid;

(k) Reference to any local laws that may be particularly relevant to the proposed consultants' contract;

(l) Statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, consultant or non-consultant services under the Project if, in the judgment of MCA-Namibia or MCC, such activities constitute a conflict of interest with the services provided under the assignment;

(m) Method in which the proposal shall be submitted, including the requirement that the technical proposals and financial proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;

(n) Request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs MCA-Namibia whether or not it will be submitting a proposal;

(o) If applicable, the short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;

(p) Period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;

(q) Anticipated date on which the selected consultant shall be expected to commence the assignment;

(r) Statement regarding tax liabilities in reference to and accordance with the Compact and the Supplemental Agreements;

(s) Details of the services, facilities, equipment, and staff to be provided by MCA-Namibia;

(t) Phasing of the assignment, if appropriate; likelihood of follow up assignments;

(u) Procedure to handle clarifications about the information given in the RFP;

(v) Any conditions for subcontracting part of the assignment; and

(w) Notice of Bid Challenge System.

Appendix 3: Guidance to Consultants

Consultants can find information about the Millennium Challenge Corporation and its programs at www.mcc.gov and about MCC Programs in the Republic of Namibia at the Web site established by MCA-Namibia (or such other appropriate Web site designated by MCA-Namibia and approved by MCC).

Part 2. Reports and Records

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC. MCA-Namibia shall also maintain and submit quarterly to MCC a cumulative report of all procurement activity (''Procurement Performance Report''), including explanations of any variance from the Procurement Plan, in the format mandated by MCC. The standard form with instructions is found on the MCC Web site, *http://www.mcc.gov.*

Part 3. Standard Solicitation Documents

MCA-Namibia shall develop standard documents to invite quotations, bids, proposals and qualifications (''Standard Solicitation Documents'') including standard bidding and proposal documents (''Standard Bidding Documents'' and ''Standard Proposal Documents''). Any Standard Solicitation Document used to procure contracts valued over US$100,000 must be available in English and is subject to review and approval by MCC. The

instructions to bidders and consultants in Standard Solicitation Documents must set out or reference the rules and procedures governing the procurement. The instructions to bidders and instructions to consultants must also state the currency or currencies for the quotes, bids or financial proposals, as appropriate, and shall specify that payment be made in either United States dollars or the local currency of the Republic of Namibia.

The terms and conditions of procurement contracts shall be set out in the applicable solicitation documents. The terms and conditions shall include a provision stipulating the governing law and the procedures for resolving contract disputes. The term and conditions also shall include provisions as required or specified by these Rules and other Compact documents including provisions that stipulate (a) MCC status and rights; (b) limitations on use or treatment of MCC funding; (c) procurement requirements; (d) records and information, access, audits and reviews, and reports; (e) compliance with rules on prohibited activities, restricted parties, and eligibility requirements of prohibited source provisions in accordance with then-applicable U.S. law, regulations and policy; (f) publicity, information and marketing; (g) insurance requirements; (h) conflict of interest; and (i) inconsistencies, as well as any other terms and conditions as applicable to a contract or agreement of that nature or otherwise as MCA-Namibia, solely upon the written instructions of MCC, may require from time to time. A summary of the applicable provisions described in (a) through (i) of this Section may be found on the MCC Web site at *http://www.mcc.gov/guidance/compact/general_provisions.pdf*. MCC has the right to review and approve any proposed contracts and any material modifications to any executed contract.

Part 4. Review and Approval Requirements

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCA-Namibia or by MCC, as provided in Attachment 1 of these Rules. This system of review and approval requirements is intended to ensure adequate oversight and monitoring of MCC-funded procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities. It is subject to modification or exception at any time by MCC.

MCA-Namibia shall ensure that all procurement actions described in Attachment 1 for goods, works, consultant and non-consultant services in furtherance of the Compact and funded in whole or in part by MCC funding shall be subject to the prior approval of the authorized entity, officer(s) or bodies designated on Attachment 1 for the corresponding type of action or dollar amount threshold, unless MCC has granted a written exception to the approval requirement set out in Attachment 1.

Notwithstanding the approval requirements set out in Attachment 1, MCC shall have the right to take review and require prior approval of any other procurement action, decision or document.

Part 5. Bid Challenge System

MCA-Namibia shall establish a bid challenge system that provides suppliers, contractors and consultants the ability to seek review of procurement actions and decisions (''Bid Challenge System''). The organization, rules and procedures of such Bid Challenge System shall be subject to MCC approval. The Bid Challenge System must include a first level of review by MCA-Namibia with an appeal to a review body. The review body must be impartial and independent and shall have no interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement, nor be involved in or related to the procurement process. The review body must follow clear and transparent written procedures and shall issue a timely written decision on any bid challenge that is timely and properly filed. The review body must have the authority to order a correction of a violation of the procurement principles and procedures or to order compensation for loss or damage suffered by a successful challenger, to the extent of the cost of preparation of the bid and the challenge. The review body must also have the power to order suspension of a procurement that is under challenge in order to preserve the commercial opportunity pending the outcome of the review. Notice of the Bid Challenge System must be set out in the solicitation documents. Standard notice provisions shall be subject to MCC approval. MCA-Namibia shall ensure that all bid challenges are accepted, reviewed and processed in accordance with the rules and procedures of the Bid Challenge System as approved by MCC.

Part 6. Subcontracting

(a) Every contract or subcontract for goods, works, consultant or non-consultant services with any party that receives at least US$50,000 in the aggregate of MCC funding shall require the contracting party to follow the fundamental procurement principles promoting transparency, openness, competition and fairness to the maximum extent possible, remaining consistent with the objectives and requirements of the contract when subcontracting for goods, works, consultant or non-consultant services.

(b) In every contract or subcontract valued in excess of US$1,000,000, the contracting party shall be required to have written procurement procedures that may be subject to review by MCA-Namibia and MCC.

(c) Any contractor or subcontractor planning to subcontract for a major item of goods, works, consultant or non-consultant services (deemed major if valued in excess of US$100,000) shall seek MCA-Namibia's prior written approval of the subcontractor.

Part 7. Amendments and Exceptions

These Rules will be amended, or otherwise modified, from time to time, at MCC's request, to reflect changes in U.S. law, regulations or policy related to the funding of procurements. In addition, these Rules may be amended by written agreement of MCC and MCA-Namibia, and MCA-Namibia will consider in good faith any amendment for the purpose of ensuring continuity and compatibility between these Rules and the MCC Program Procurement Guidelines. On a case by case basis, the MCC may grant a waiver or exception to the Rules. Such waiver or exception must be in writing and shall be effective only to the extent specifically set forth in such writing.

Part 8. Publication of MCA-Namibia Procurement Rules

MCA-Namibia shall ensure that these Rules (including any amendments thereto) are published on MCA-Namibia's Web site (or such other appropriate Web site designated by MCA-Namibia and approved by MCC).

MCA-Namibia Procurement Rules Attachment 1

Approval Requirements

REVIEW OF PROCUREMENT DECISIONS—GOODS, WORKS AND NON-CONSULTANT SERVICES

Procurement procedure or method	Decision [55]	Level of review (thresholds expressed in US$)		
		MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia [56]	MCC
	Procurement Plans	All	All	All.
	Amendments to Procurement Plans	All	Substantial Deviation	All.
Pre-qualification	Pre-qualification documents and advertising procedures.	All	None	Above 1,000,000.
	Report with proposed list of entities qualified.	All	Above 500,000	Above 500,000.
	Record of Bid Challenges	All	All	All.
Competitive Bidding	Bidding Documents	All	None	Above 1,000,000 Goods. Above 5,000,000 Works.
	Technical Evaluation or Review Report with Proposed Award.	All	None	Above 250,000.
	Final Contract	All	Above 250,000	Above 250,000.
	Record of Bid Challenges	All	All	All.
Limited Bidding	Short list	All	None	Above 100,000.
	Bidding Documents	All	None	Above 500,000.
	Technical Evaluation or Review Report with Proposed Award.	All	None	Above 1,000,000.
	Final Contract	All	Above 1,000,000	Above 1,000,000.
	Record of Bid Challenges	All	All	All.
Shopping	Short list	Over 2,000	None	None.
	Record of Purchases	Weekly	Monthly	None.
	Record of Bid Challenges	All	All	Quarterly record of decisions.
Direct Contracting	Proposed Award	Over 2,000	None	Above 50,000.
	Final Contract	Over 2,000 (Under 2,000 review monthly report).	Above 50,000	Above 50,000.
	Record of Bid Challenges	All	All	All.
Force Account	Selection of using equipment owned by or employees of Government for performing works.	All	All	All.
	Proposed contract	All	None	All.
	Final contract	All	All	All.
All Procurement Actions.	Contract Modifications and Change Orders.	All	For all contract awards approved previously if increases value of Contract by 10% or more, or raises a contract which did not require approval above an approval threshold or if extends Contract original term by 25% or more without value increase.	If increases value of Contract by 10% or more.

REVIEW OF PROCUREMENT DECISIONS—CONSULTANT SERVICES

Procurement procedure or method	Decision	Level of review (thresholds expressed in US$)		
		MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia	MCC
	Procurement Plans	All	All	All.
	Amendments to Procurement Plans	All	Substantial Deviation	All.
Quality and Cost Based Selection.	Request for Expression of Interest	All	None	Above 500,000.
	Technical Evaluation Panel	All	None	Above 500,000.
	Short list	All	None	Above 100,000.
	Proposal Documents	All	None	Above 500,000.
	Technical Evaluation Report	All	None	Above 100,000.
	Proposed Award	All	None	Above 100,000.
	Final Contract	All	Above 100,000	Above 100,000.
	Record of Bid Challenges	All	All	All.
Quality Based Selection and Selection under Fixed Budget.	Request for Expression of Interest	All	None	Above 500,000.

REVIEW OF PROCUREMENT DECISIONS—CONSULTANT SERVICES—Continued

Procurement procedure or method	Decision	Level of review (thresholds expressed in US$)		
		MCA-Namibia Director of Procurement	Governing Body of MCA-Namibia	MCC
	Technical Evaluation Panel	All	None	Above 500,000.
	Short list	All	None	Above 100,000.
	Proposal Documents	All	None	Above 500,000.
	Technical Evaluation Report for QBS only.	All	None	Above 100,000.
	Proposed Award	All	Above 100,000	Above 100,000.
	Final Contract	All	Above 100,000	Above 100,000.
	Record of Bid Challenges	All	All	All.
Least-Cost Selection.	Request for Expression of Interest	All	None	None.
	Technical Evaluation Panel	All	None	None.
	Short list	All	None	Above 100,000.
	Proposal Documents	All	None	None.
	Proposed Award	All	None	Above 100,000.
	Final Contract	All	Above 100,000	None.
	Record of Bid Challenges	All	All	All.
Selection Based on Consultant's Qualifications.	Request for Expression of Interest	All	None	None.
	Technical Evaluation Panel	All	None	None.
	Short list	All	None	Above 50,000.
	Standard Solicitation Documents	All	None	None.
	Technical Evaluation Report	All	None	None.
	Proposed Award	All	None	None.
	Final Contract	All	Above 50,000	Above 50,000.
	Record of Bid Challenges	All	All	All.
Single-Source Selection.	Proposed Award	All	None	Above 50,000.
	Final Contract	All	Above 50,000	Above 50,000.
	Record of Bid Challenges	All	All	All.
Selection of Individual Consultants.	Short list	All	None	Above 50,000.
	Technical Evaluation Panel	All	None	Above 50,000.
	Technical Evaluation Report	All	None	None.
	Proposed Award	All	None	None.
	Final Contract	All	Above 50,000	Above 50,000.
	Record of Bid Challenges	All	All	All.
All Procurement Actions.	Contract Modifications and Change Orders.	All	For all contract awards approved previously if increases value of contract, or raises a contract which did not require approval above an approval threshold or if extends contract original term by 25% or more without value increase.	If increases value of contract by 10% or more.

MCA-Namibia Procurement Rules Attachment 2

Glossary of Terms

Bid Challenge System shall have the meaning set forth in Part 5.

Blanket Purchase Agreement or *BPA* shall have the meaning set forth in Section 1B, Par. 4.5.2.

Consultant's Qualifications or *CBS* shall have the meaning set forth in Section 1B, Par. 3.7.

Compact means the Millennium Challenge Compact entered into between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Namibia.

Competitive Bidding or *CB* shall have the meaning set forth in Section 1A, Par. 1.3.

Direct Contracting shall have the meaning set forth in Section 1A, Pars. 3.6 and 3.7.

dgMarket shall have the meaning set forth in Section 1A, Par 2.7.

Fixed Budget or *FBS* shall have the meaning set forth in Section 1B, Par. 3.5.

Fixed Price Contract shall have the meaning set forth in Section 1B, Par. 4.1.

Force Account shall have the meaning set forth in Section 1A, Par.3.8.

General Procurement Notice shall have the meaning set forth in Section 1A, Par. 2.7.

Indefinite Delivery and Indefinite Quantity Contract or *IDIQ Contract* shall have the meaning set forth in Section 1B, Par. 4.5.1.

[55] Within each ''procurement Procedure or Method,'' each separate ''Decision'' shown is an independent requirement, and all requisite approvals must be received for each such ''Decision'' before proceeding, sequentially from top to bottom, to the next ''Decision'' requirement.

[56] Notwithstanding the thresholds set forth in this Attachment 2 of these Rules with respect to the Governing Body of MCA-Namibia, the Governing Body may exercise its authority to review any procurement decision with prior notice to the principal officer of MCA-Namibia.

Instructions to Consultants or *ITC* shall have the meaning set forth in Section 1B, Par. 2.11.

Least-Cost Selection or *LCS* shall have the meaning set forth in Section 1B, Par. 3.6.

Letter of Invitation or *LOI* shall have the meaning set forth in Section 1B, Par. 2.10.

Limited Bidding or *LB* shall have the meaning set forth in Part 1A, Par.3.2.

MCA-Namibia means the National Planning Commission of the Republic of Namibia, in its capacity as the accountable entity responsible to oversee, manage and implement the Program, on behalf of the Republic of Namibia.

MCC means the Millennium Challenge Corporation.

MCC Cost Principles means MCC's ''Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants'' and ''Cost Principles for Government Affiliates Involved in MCC Compact Implementation,'' both located on MCC's Web site at *http://www.mcc.gov.*

Performance Based Procurement or Output Based Procurement shall have the meaning set forth in Section 1A, Par. 3.14.

Procurement Plan shall have the meaning set forth in Section 1A, Par. 1.16.1.

Procurement Performance Report shall have the meaning set forth in Part 2.

Procurement Principles shall have the meaning set forth in Section 1A, Par 1.2.1 and Section 1B, Par. 1.4.1.

Procurement Rules or *Rules* shall have the meaning set forth in Part 1, Preamble.

Project(s) shall have the meaning set forth in Part 1, Preamble.

Quality Based Selection or *QBS* shall have the meaning set forth in Section 1B, Pars. 3.2 thru 3.2.

Quality Cost Based Selection or *QCBS* shall have the meaning set forth in Section 1B, Par. 1.5.

Request for Expression of Interest or *EOI* shall have the meaning set forth in Section 1B, Par. 2.5.2.

Request for Proposals or *RFP* shall have the meaning set forth in Section 1B, Par. 2.9.

Single-Source Selection or *SSS* shall have the meaning set forth in Section 1B, Pars. 3.9 thru 3.13.

Shopping shall have the meaning set forth in Section 1A, Par. 3.5.

Specific Procurement Notice shall have the meaning set forth in Section 1A, Par. 2.8 and Section 1B, Par. 2.5.2.

Standard Bidding Documents shall have the meaning set forth in Part 3.

Standard Proposal Documents shall have the meaning set forth in Part 3.

Standard Solicitation Documents shall have the meaning set forth in Part 3.

Supplemental Agreement shall have the meaning set forth in Section 1A, Par. 3.10.

Terms of Reference or *TOR* shall have the meaning set forth in Section 1B, Par. 2.3.

Time-Based Contract shall have the meaning set forth in Section 1B, Par. 4.2.

Two-Stage Bidding shall have the meaning set forth in Section 1A, Par. 2.6.

UNDB Online shall have the meaning set forth in Section 1A, Par. 2.7.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Incidental Takes of Marine Mammals During Specified Activities; Shallow Hazard and Site Clearance Surveys in the Chukchi Sea in 2008; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ55

Incidental Takes of Marine Mammals During Specified Activities; Shallow Hazard and Site Clearance Surveys in the Chukchi Sea in 2008

ACTION: Notice of issuance of a marine mammal incidental take authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by Level-B harassment, incidental to conducting open water shallow hazard and site clearance surveys by ASRC Energy Service (AES) in the Chukchi Sea, has been issued for a period of one year from the IHA effective date.

DATES: The authorization is effective from July 30, 2008, until September 25, 2008.

ADDRESSES: Copy of the application, IHA, the *Final Programmatic Environmental Assessment for Arctic Ocean Outer Continental Shelf Seismic Surveys - 2006* (2006 PEA) prepared by the Minerals Management Service (MMS), the 2008 Supplemental Environmental Assessment (SEA) for the Issuance of five IHAs for open water seismic surveys and shallow hazard and site clearance surveys in the Arctic, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here (see FOR FURTHER INFORMATION CONTACT).

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On March 25, 2008, NMFS received an application from AES for the taking, by Level B harassment, of several species of marine mammals incidental to conducting shallow hazard and site clearance surveys in the Chukchi Sea for up to 100 days from approximately July 1, 2008 until November 30, 2008. On June 26, 2008, AES notified NMFS that the proposed shallow hazard and site clearance survey could be finished before September 25, 2008, with a maximum of up to 60 days. The marine surveys would take place in the Chukchi Sea covering the area involved in MMS Lease Sale 193. The specific areas where the AES proposed shallow hazard and site clearance surveys would be are the Burger, Crackerjack, Ulu, and Caramel prospect sites in the Chukchi Sea. The marine surveys will be performed from a seismic vessel.

Detailed information on the shallow hazard and seismic surveys can be found in the AES application and in the **Federal Register** notice for the proposed IHA published on April 28, 2008 (73 FR 22922) (hereinafter ''FR Notice of Proposed IHA''). Except for the updated seismic activity period and specific locations, no changes have been made to the proposed activities.

Comments and Responses

A FR Notice of Proposed IHA was published on April 28, 2008 (73 FR 22922). During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the California Gray Whale Coalition (CGWC); the Native Village of Point Hope (NVPH); the North Slope Borough (NSB); the Alaska Eskimo Whaling Commission (AEWC); the Center for Biological Diversity, Pacific Environment, Sierra Club, Natural Resources Defense Council and Alaska Wilderness League; Oceana and Ocean Conservancy; Dr. David E. Bain of the University of Washington; Dr. Richard Steiner of the University of Alaska; and one private citizen.

General Comments

Comment 1: The Commission recommends that NMFS issue the IHA provided that (a) the proposed marine mammal mitigation and monitoring activities are carried out as described in NMFS' FR Notice of Proposed IHA; and (b) operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to those operations.

Response: NMFS concurs with the Commission's recommendation and will require the immediate suspension of seismic activities if a dead or injured marine mammal has been sighted within an area where the Holder of the IHA deployed and utilized seismic airguns within the past 24 hours.

Comment 2: The NSB points out that the AES application was poorly written, and that it did not reference the primary literature but used the summary information presented in the SAR. The NSB also points out that the scientific name of beluga whales was misspelled and the scientific name of the northern right whale was incorrect in the AES application. In essence, the NSB states that the application does not provide readers with confidence that AES has an

understanding of the background information or the need or expertise to conduct marine mammal monitoring or mitigation in association with the proposed site clearance or shallow hazard surveys.

Response: Comment noted. NMFS reviewed the AES application and verified the information provided within. While information is lacking, NMFS conducted relevant research so that complete information is provided in the FR Notice of Proposed IHA. In addition, detailed and updated information on bowhead whales and other marine mammal species is provided in the MMS 2006 PEA, MMS 2007 draft PEIS, NMFS 2008 SEA, and the SAR, as referenced in the FR Notice of Proposed IHA.

Comment 3: The NVPH, CBD, and NSB point out that neither NMFS, nor AES has identified the specific locations where AES plans to conduct its shallow hazard and site clearance surveys, except that its vessels would remain 40 km (25 mi) away from the Chukchi coast. The CBD further points out that NMFS did not provide specific dates of the proposed AES shallow hazard and site clearance surveys. As such, the CBD suggests NMFS should reject AES' application as incomplete and requests that NMFS reopen the public comment period for an additional 30 days. The NVPH requests that NMFS identify all of the areas where subsistence hunting occurs, and impose enforceable restrictions that would require AES to avoid such areas by a distance sufficient to prevent displacement of marine mammals.

Response: At the time of the publication of the FR Notice of Proposed IHA, no information was available regarding the exact locations of the survey and the specific dates because AES was in the stage of securing its client(s) and therefore could not have known where seismic survey operations would occur in the Chukchi Sea. Nevertheless, NMFS was able to conduct an analysis of AES' proposed 2008 open water seismic activities and its potential impacts on marine mammals and subsistence uses. NMFS' preliminary determination that the issuance of an IHA to AES would have a negligible impact on affected species or stocks of marine mammals and would result in no unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses was based on information contained in the AES application, including overall area (i.e., the area denoted as LS 193 in the Chukchi Sea), the period of the seismic operations (i.e., approximately July 1 - November 30, 2008), the acoustic equipment planned to be used for the surveys, marine mammal species and stocks that are likely to be found in the vicinity of the project area, and the proposed mitigation and monitoring measures.

In addition, the MMPA and NMFS' implementing regulations provide a 30–day comment period on a proposed IHA. Based upon the information contained in the FR Notice of Proposed IHA, NMFS believes that the comment period afforded the public with ample time to comment on AES' proposed seismic surveys, despite the fact that AES did not identify an exact location in which the proposed surveys would occur. At this time, the precise survey locations and operation timeframe have been identified (see Description of the Specified Activity section above). Therefore, the IHA issued to AES limits its 2008 open water shallow hazard and site clearance surveys within these areas.

Finally, the areas and season where subsistence hunting occurs are described and analyzed in detail in the MMS 2007 EIS on Chukchi Sea Lease Sale 193, and NMFS has developed a list of mitigation measures that restrict seismic activities when the subsistence hunt occurs. For example, no seismic activities would be permitted before July 15 in the Chukchi Sea spring lead system. Also, as analyzed in the FR Notice of Proposed IHA, it is possible that small numbers of marine mammals could be temporarily displaced from their feeding areas as a result of the proposed shallow hazard and site clearance surveys. However, NMFS believes any displacement would constitute Level B behavioral harassment with the magnitude of displacement being relatively slight. NMFS does not believe the displacement of marine mammals would result in an unmitigable adverse impact to the availability of marine mammal species and/or stocks to subsistence uses because the AES would complete their seismic surveys before the fall bowhead hunting season, and it would not begin their operations prior to the completion of the late spring whale harvest, which is already over.

In addition, NMFS understands that AES has developed a POC with the Native communities. The POC specifies measures AES would take to help ensure that any harassment of marine mammals resulting from the proposed activities will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. NMFS will also require AES to comply with certain terms and conditions in the IHA to help ensure the availability of marine mammals for taking for subsistence uses. Please see description of the mitigation and monitoring measures below.

Comment 4: The CBD and CGWC urge NMFS not to issue any take authorization to AES for the proposed activities unless and until the agency can ensure that mitigation measures are in place that truly avoid adverse impacts to all species and their habitats and only after full and adequate public participation has occurred and environmental review of the cumulative impacts of such activities on these species and their habitats has been undertaken. The CBD feels that the proposed IHA does not meet these standards and therefore violate the MMPA, ESA, NEPA, and other governing statutes and regulations.

Response: NMFS does not agree with CBD's assessment. In its FR Notice of Proposed IHA, NMFS outlined in detail the proposed mitigation and monitoring requirements. The implementation of these measures will reduce the impacts of the proposed survey on marine mammals and their surrounding environment to the lowest level practicable, as required by the MMPA. The public was given 30 days to review and comment on these measures, in accordance with section 101(a)(5)(D) of the MMPA. NMFS has prepared a Supplemental EA to the 2006 MMS PEA. NMFS has fulfilled its obligations under NEPA by completing a SEA, which is not required to be available for public comment prior to its finalization. Additionally, NMFS completed a Biological Opinion in July, 2008, as required by section 7 of the ESA, which concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Therefore, NMFS does not believe the issuance of an IHA to AES would result in a violation of the MMPA, ESA, NEPA, and other governing statutes and regulations.

Acoustics Impacts

Comment 5: Citing studies on noise impacts to chinchillas (Henderson *et al.*, 1991) and human noise exposure standards by the U.S. Occupational Safety Health Administration (OSHA), Dr. Bain states that ''in humans, chronic exposure to levels of noise too low to generate a TTS can result in PTS.'' As OSHA standards require limiting human exposure to noise at 115 dBA above threshold to 15 minutes per day, Dr. Bain concludes that this level is equivalent to 145 dB re 1 microPa for killer whales.

Response: Although NMFS agrees that chronic exposure to noise levels that would not cause TTS could result in hearing impairment in the long-term, it is important to understand that such exposure has to be of a chronic and long-term nature. The OSHA standards for permissible exposure are based on daily impacts throughout an employee's career, while the noise exposure to seismic surveys by marine mammals is short-term and intermittent, as described in the FR Notice of Proposed IHA and in the MMS 2006 PEA. In addition, the reference Dr. Bain cites to (Henderson *et al.*, 1991) does not address chronic noise impact to humans. The research by Henderson *et al.* (1991) focused on the applicability of the equal energy hypothesis (EEH) to impact (impulse) noise exposures on chinchillas, and the results indicated that hearing loss resulting from exposure to impact noise did not conform to the predictions of the EEH, which is the basis for OSHA standards for continuous noise exposure.

Most importantly, Dr. Bain's extrapolation of 145 dB re 1 microPa for killer whale hearing safety from OSHA's 115 dBA is fundamentally flawed for three reasons:

(1) The reference points when using decibel (dB) unit that address sound in air and in water are different. For airborne sounds, such as those by OSHA, the reference point is 20 microPa, while for underwater sounds, the reference point is 1 microPa. There are 26 dB differences between the values when different reference points are used for the same sound pressure, therefore, 115 dB re 20 microPa is 141 dB re 1 microPa for the same sound pressure. So 115 dB re 20 microPa in air above human threshold (defined as 0 dB re 20 microPa in air) would be 141 dB re 1 microPa underwater for the same sound pressure. Using the lowest threshold of 30 dB re 1 microPa as the killer whale hearing threshold, and assuming that noise impacts to killer whales are the same as for humans, one could extrapolate that continuous noise exposure of 171 dB re 1 microPa (141 dB over the 30 dB threshold) for 15 minutes for killer whales would be equivalent to humans exposed to 115 dB re 20 microPa for 15 minutes. Nevertheless, such extrapolation still leaves much uncertainty since marine mammals have a different mechanism for sound reception (Au, 1993; Richardson *et al.*, 1005). Some of the most recent science have shown that for some odontocetes, the onset of TTS when exposed to impulse noise is much higher (Finneran *et al.*, 2002) than NMFS' current thresholds.

(2) The decibel values used by OSHA are expressed as broadband A-weighted sound levels expressed in dBA. This frequency-dependent weighting function is used to apply to the sound in accordance with the sensitivity of the human ear to different frequencies. Thus, it is inappropriate to compare these values to an animal's hearing capability, including how an animal perceives sound in air (Richardson *et al.*, 1995). For marine mammals, M-weighting functions have been suggested based on five different hearing functional groups to address different hearing sensitivities of different frequencies by each of the marine mammal groups (Southall *et al.*, 2007).

(3) Finally, the sound characteristic used in OSHA standards is continuous sound, while the seismic sound from the proposed shallow hazard and site clearance surveys is impulse sound, which by its very nature is not a continuous sound.

Comment 6: Dr. Bain asserts that the zone of immediate risk of injury or death for marine mammals should be within the 150 - 215 dB re 1 microPa contours and assumes that values can be extrapolated from terrestrial species. Dr. Bain supports his argument by stating that immediate injury may result from brief exposure to sound levels that are 120 to 140 dB above threshold in terrestrial mammals, and that marine mammals vary in their best sensitivity from killer whales at around 30 dB re 1 microPa (killer whale) to 60 dB re 1 microPa (phocids) and 75 dB re 1 microPa (otariids)

Response: NMFS does not agree with Dr. Bain's assessment. As discussed in *Response* to *Comment 4*, the reference points when using decibel (dB) unit that address sound in air is 20 microPa, while in water the reference point is 1 microPa. Therefore, the decibel levels used to address injury in terrestrial mammals cannot be extrapolated to apply marine mammal species without adding a correction factor of 26 dB (see Richardson *et al.*, 1995). Even so, plenty of controlled laboratory experiments on several marine mammal species (e.g., beluga whales, bottlenose dolphins, harbor seals, California sea lions, and northern elephant seals) in the past decade point out injuries (PTS) to marine mammals would probably occur at much higher sound exposure levels, far above the 180 and 190 dB re 1 microPa NMFS currently applies to protect cetaceans and pinnipeds from onset of Level A harassment (injury). (see review by Southall *et al.*, 2007).

Comment 7: Citing OSHA (2007) standards for human noise exposure standards, Nachtigall *et al.* (2003), and Henderson *et al.* (1991), Dr. Bain extrapolates that permanent injury to hearing from repeated exposure to noise at 120 dB re 1 microPa would occur to killer whales after being exposed for 8 hours.

Response: NMFS does not agree with Dr. Bain's assessment as such an extrapolation is invalid. First, as discussed in *Response* to *Comment 5*, the reference point addressing sound levels or intensities in air, which is used by OSHA for the human noise exposure standards, is relative to 20 microPa, while the reference point used to address sound levels or intensities in water is relative to 1 microPa. These are fundamentally different acoustical measures and should not be confused. Second, as discussed in *Response* to *Comment 5*, the noise exposure standard unit used by OSHA is dBA, which is the weighted sound exposure level based on human hearing sensitivities, and is not suitable to be used in other animals which have very different hearing sensitivities across the spectrum. Third, the sound sources used by OSHA are based on continuous sound, as is the referenced paper by Nachtigall *et al.* (2003), while the sound sources from the proposed seismic surveys are impulse sounds. The prediction of acoustic injury from continuous noise exposure is not applicable to impulse noise exposure, as is shown in the referenced paper by Henderson *et al.* (1991); therefore, the extrapolation is invalid. Fourth, ambient noise levels at many shallow water areas could easily reach 120 dB re 1 microPa, coupled with surf and wave actions. If killer whales suffered from permanent hearing damage when exposed to this noise level for 8 hours as suggested by Dr. Bain, then most killer whales in the coastal areas would have no hearing left. The lab controlled experiments by Nachtigall *et al.* (2003), as cited by Dr. Bain, show that an Atlantic bottlenose dolphin exhibited TTS of an average 11 dB after being exposed to continued noise up to 179 dB re 1 microPa for 55 minutes, a much higher level than where Dr. Bain would consider TTS to occur. However, in the wild, animals are expected to avoid such intense noise levels, thus preventing onset of TTS. Finally, killer whales are not expected to occur frequently in the proposed Arctic shallow hazard and site clearance project area, so the risk to this species is minimal.

Comment 8: Citing several papers on killer whales, harbor porpoises, and marbeled murrelets, Dr. Bain states that major behavior changes of these animals appear to be associated with received

levels of around 135 dB re 1 microPa, and that minor behavioral changes can occur at received levels from 90 - 110 dB re 1 microPa or lower. Citing his own studies, Dr. Bain states that ''killer whales are 40% less likely to forage at all when vessels are nearby, perhaps because vessel noise masks echoes from prey, making the probability of foraging successfully negligible (Bain *et al.*, 2006a; 2006b).'' In addition, Dr. Bain states that the threshold for effects on harbor porpoise is 90 dB re 1 microPa, for killer whale is 100 dB re 1 microPa, and for beluga whale is 153 dB re 1 microPa, which are all lower than the threshold used to estimate the takes. CBD also cited a study of Canadian beluga whales showing flight responses from ice-breakers at received sound levels as low as 94 dB.

Response: NMFS does not agree with Dr. Bain and CBD's assessment. Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals would react in a biologically significant way. In addition, as discussed in *Response* to *Comment 6*, ambient noise levels in many of the world's ocean can easily exceed 90 dB re 1 microPa (Urick, 1983).

According to experts on marine mammal behavior, the degree of reaction which constitutes a ''take,'' i.e., a reaction deemed to be biologically significant that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc. of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include, but are not limited to, other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.*, 2007).

The references cited by Dr. Bain and CBD in this comment address different source characteristics (continuous sound rather than impulse sound that are planned for the proposed shallow hazard and site clearance surveys) or species (killer whales and harbor proposes) that rarely occur in the proposed Arctic action area. No reference supporting the ''threshold for effects'' on beluga whales is provided by Dr. Bain. Much research regarding bowhead and gray whales response to seismic survey noises has been conducted in addition to marine mammal monitoring studies during prior seismic surveys. Detailed descriptions regarding behavior responses of these marine mammals to seismic sounds are available (e.g., Richardson *et al.*, 1995; review by Southall *et al.*, 2007), and are also discussed in this document.

Comment 9: Dr. Bain states that sound sources are typically divided into continuous and pulsed categories, and that behavioral effects from pulsed sound are likely to be independent of the repetition rate and duty cycle, and depend primarily on the duration of the survey. Dr. Bain further states that intermittent pulses can result in continuously received noise when sound arrives via multiple paths, which Dr. Bain explains as ''sound that bounces between the bottom and the surface will take longer to reach an animal than sound traveling via a direct path,'' and that ''noise can mask signals for a brief period before and after it is received, meaning an almost continuous received noise can mask signals continuously.'' Dr. Bain concludes that ''the subbottom profilers proposed for use during the site clearance surveys, with the very short intervals between pulses, present a risk of continuous masking effects.''

Response: NMFS does not agree with Dr. Bain's statement on ocean acoustics and his subsequent analysis and assessment regarding underwater sound propagation and its effects to marine mammals. Within the scientific community on ocean acoustics and bioacoustics, two types of sounds are traditionally recognized: transient sounds (sounds of relatively short duration) and continuous sounds (sounds that go on and on). Transient sounds can be further classified into impulsive (such as seismic airguns, explosives, pile driving) and non-impulsive (such as military tactic sonars) sounds (Richardson *et al.*, 1995). Other researchers working on noise impacts to marine mammals classified sound types into a single pulse (such as a single explosive), multiple pulses (seismic airguns, pile driving), and nonpulses (ship, sonar) (Southall *et al.*, 2007). A simple way to distinguish pulses sound from nonpulses (continuous sound included) is that the former have rapid rise-time in relation to its extremely short duration. As mentioned in Response to Comment 8, behavioral responses from marine mammals when exposed to underwater noise is complex and context specific, and often depend on the sound characteristics (such as received levels, duration, duty cycles, frequency, etc.) and other variables.

NMFS agrees that the distinction between transient and continuous sounds is not absolute, as continuous sound from a fast moving vessel is often treated as transient sound in relation to a stationary or slow moving marine mammal. Further, the distinction between pulses and nonpulses is also not always clear as certain pulsed sound sources (e.g., seismic airguns and explosives) may become nonpulses at greater distances due to signal decay through reverberation and other propagation paths. However, Dr. Bain's statement that intermittent pulses can result in continuously received noise when sound arrives via multiple paths is unfounded. For a marine mammal exposed to noise, multipath propagation would expose the animal to the noise multiple times, usually each subsequent exposure with lower sound level due to loss of acoustic energy from surface and bottom reflections; however, the noise arriving via multipath propagation would not become continuous sound because the intervals between signals would always exist. In addition, noise cannot mask a signal before or after it is received by the animal. Noise masking of signals can only occur when the unwanted sound (noise) interferes with the signal when received by the animal, generally at similar frequencies (Richardson *et al.*, 1995). Therefore, Dr. Bain's assessment that the subbottom profilers proposed for shallow hazard and site clearance surveys would cause continuous masking effects to marine mammals is not supported.

*Comment 10:*Dr. Bain states that one characteristic of pulsed sources is known as ''time-bandwidth'' product, and he explains that it is ''any sound with a finite duration (that is, any real-world sound) contains additional frequencies to the nominal frequency. That is, pulsed sources that nominally have a frequency that is too high to hear, may, in fact, be audible, as the source will contain lower frequencies that are detectable.''

Response: NMFS does not agree with Dr. Bain's statement that high frequency pulsed sources nominally contain additional frequencies that are audible. The high frequency pulsed sources are expected to operate within their frequency range, although some mechanical noise at lower frequencies may be produced as a byproduct during the operation. The mechanical noise associated with acoustic equipment is

expected to be low intensity and is not expected to result in harassment of marine mammals. Furthermore, the term ''time-bandwidth product'' is generally used in signal process, which is irrelevant to the proposed Arctic seismic survey.

Comment 11: Dr. Bain states that the directionality of the sources and whether they are on during turns would also affect the ensonified area.

Response: All acoustic sources are downward directional, thus no additional ensonified area would result during turns.

Comment 12: The CBD argues that NMFS analysis of the various high-energy sound sources on marine mammals is deficient, with NMFS for the most part simply asserting that the sound generated by these sources is outside the hearing range of most marine mammals. The CBD further states that even NMFS acknowledges that odontocetes such as beluga whales can in fact hear these sounds.

Response: NMFS does not agree with the CBD statement as it does not have scientific basis. In the FR Notice of the Proposed IHA, NMFS stated that the 445 kHz frequency band from the Klein System 3000 dual frequency digital side-scan sonar is outside any marine mammal species' hearing range, therefore, there would be no effect to marine mammals when this frequency is chosen. High frequency sounds above 200 kHz are clearly outside the hearing ranges for any marine mammals, which is well accepted among marine mammal bioacousticians (Richardson *et al.*, 1995; Southall *et al.*, 2007). In addition, NMFS never acknowledged that odontocetes such as beluga whales can hear these sounds (CBD did not provide any reference to support its statement.) Furthermore, the sound generated by various side-scan sonars operated at the frequency of 120 kHz and beyond produce signals above the hearing ranges for mysticetes, such as bowhead, gray, humpback, and minke whales (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Comment 13: Citing Weilgart (2007), the CGWC states that seismic surveys can raise low-frequency noise over vast areas for more than a month, exposing large portions of a cetacean population to chronic noise. Citing Tyack (1988), the CGWC further states that avoidance behavior has been reported for gray whales in response to decibels great than 120 dB for continuous noise and 160 - 170 dB for pulsed sounds. In addition, the CGWC points out that playback of sounds from a Bell 212 turbine helicopter projected at random intervals of 10 seconds to 2 minutes showed significant course changes in gray whales in apparent avoidance of the sounds. Finally, the CGWC states that reactions to noise by gray whales are more pronounced on their breeding/calving grounds (Malme *et al.*, 1983; 1984), and that gray whales were displaced for greater than 5 years from one of their breeding lagoons in response to industrial sounds (Jones *et al.*, 1994).

Response: NMFS does not agree with CGWC's ''one size fits all'' statement that ''seismic surveys can raise low-frequency noise over vast areas for more than a month, exposing large portions of a cetacean population to chronic noise.'' The degree and number of cetaceans, or any marine mammal species that can be exposed to a seismic survey depends on the duration of the survey, the intensity of the airgun source, and the density of cetacean population, or other marine mammals, in the vicinity of the survey area.

NMFS agrees with CGWC's comments that behavioral modification of many marine mammals starts when exposed to pulsed sounds at 160 - 170 dB, as cited in Tyack (1988), which is consistence with NMFS current criteria for Level B behavioral harassment of 160–dB when exposed to pulsed sounds, and 120–dB when exposed to continuous sounds. The signals produced by airguns and other acoustic equipment for the proposed AES shallow hazard and site clearance survey are all pulsed sounds.

Finally, the proposed survey area in the Arctic Ocean is not gray whale breeding/calving grounds, so there will be no effect to this species' breeding/calving activities from the proposed activity.

Comment 14: The CGWC states that when gray whales were on their feeding grounds, Malme *et al.* (1986) estimated that there was a 50 percent probability of gray whale avoidance when the average pulse level of the received noise was approximately 173 dB and a 10 percent probability of avoidance at 163 dB.

Response: Comment noted. Though some gray whales (10 percent) may be temporarily affected by seismic surveys when exposed to received level at 163 dB as referenced by Malme *et al.* (1986), NMFS does not consider this effect to be significant for the following reasons: (1) the proposed shallow hazard and site clearance survey area is in the Chukchi Sea and is not a primary feeding ground for gray whales. The majority of gray whales feed on amphipods in shallow coastal waters in the Bering Sea which is not located near the proposed seismic survey area; and (2) a 160–dB safety zone will be established requiring shut-down of airguns when a congregation of 12 or more bowhead or gray whales is sighted during the AES seismic activities.

Comment 15: Citing NMFS (2002), Weller *et al.* (2006a; 2006b), and IWC (2007), the CGWC states that noise has been thought to at least contribute to some species' decline or lack of recovery.

Response: Comment noted. However, since the CGWC did not provide the full reference of the citation, NMFS is not able to verify its statement. Nevertheless, for the proposed AES shallow hazard and site clearance survey, NMFS has conducted a through analysis of the potential impacts from seismic noise to marine mammals in its FR Notice of Proposed IHA. More extensive analyses are also provided in the MMS 2006 PEA, the MMS 2007 draft PEIS and the 2008 SEA. As stated in this document, NMFS finds that the impact of conducting the shallow hazard and site clearance surveys in Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals.

MMPA Comments

Comment 16: The CBD and NSB state that since NMFS has not promulgated any regulations related to shallow hazard and site clearance surveys under the MMPA, and because such surveys and associated activities carry the real potential of injury or death to marine mammals, neither an IHA nor an LOA can be issued for the AES' proposed activities.

Response: NMFS does not agree with the CBD and NSB's statement. Section 101(a)(5)(D) of the MMPA authorizes Level A (injury) harassment and Level B (behavioral) harassment takes. While NMFS' regulations indicate that a LOA must be issued if there is a potential for serious injury or mortality, NMFS does not believe that AES' shallow hazard and site clearance survey require issuance of a LOA. As explained throughout this **Federal Register** Notice of the Proposed IHA, it is highly unlikely that marine mammals would be exposed to sound pressure levels (SPLs) that could result in serious injury or mortality. The best scientific information indicates that an auditory injury is unlikely to occur as apparently sounds need to be significantly greater than 180 dB for injury to occur (Southall *et al.*, 2007).

NMFS has determined that exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight temporary threshold shift

(TTS) in hearing in a small odontocete, assuming the TTS threshold is a function of the total received pulse energy. Received levels of 200 205 dB or more from the loudest acoustic device would be restricted to a radius of no more than 5 m (16 ft) around a seismic vessel. AES' airgun array is considered to be of small size. For baleen whales, while there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS, there is a strong likelihood that baleen whales (bowhead and gray whales) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of onset of TTS. For pinnipeds, information indicates that for single seismic impulses, sounds would need to be higher than 190 dB rms for TTS to occur while exposure to several seismic pulses indicates that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations. Consequently, NMFS has determined that it would be lawful to issue an IHA to AES for the 2008 seismic survey program.

*Comment 17:*The CBD states that it referenced the scientific literature linking seismic surveys with marine mammal stranding events in its comments to MMS on the 2006 Draft PEA and in comments to NMFS and MMS on the 2007 DPEIS. The CBD further states that NMFS' failure to address these studies and the threat of serious injury or mortality to marine mammals from seismic surveys renders NMFS' conclusory determination that serious injury or morality will not occur from AES' activities arbitrary and capricious.

Response: The MMS briefly addressed the humpback whale stranding in Brazil on page PEA–127 in the 2006 Final PEA. Marine mammal strandings are also discussed in the MMS 2007 DPEIS. A more detailed response to the cited strandings has been provided in several previous IHA issuance notices for seismic surveys (e.g., 73 FR 40512, July 15, 2008). Additional information has not been provided by CBD or others regarding these strandings. As NMFS has stated, the evidence linking marine mammal strandings and seismic surveys remains tenuous at best. Two papers, Taylor *et al.* (2004) and Engel *et al.* (2004), reference seismic signals as a possible cause for a marine mammal stranding. Taylor *et al.* (2004) noted two beaked whale stranding incidents related to seismic surveys. The statement in Taylor *et al.* (2004) was that the seismic vessel was firing its airguns at 1300 hrs on September 24, 2004, and that between 1400 and 1600 hrs, local fishermen found live-stranded beaked whales some 22 km (12 nm) from the ship's location. A review of the vessel's trackline indicated that the closest approach of the seismic vessel and the beaked whales' stranding location was 33 km (18 nm) at 1430 hrs. At 1300 hrs, the seismic vessel was located 46 km (25 nm) from the stranding location. What is unknown is the location of the beaked whales prior to the stranding in relation to the seismic vessel, but the close timing of events indicates that the distance was not less than 33 km (18 nm). No physical evidence for a link between the seismic survey and the stranding was obtained. In addition, Taylor *et al.* (2004) indicates that the same seismic vessel was operating 500 km (270 nm) from the site of the Galapagos Island stranding in 2000. Whether the 2004 seismic survey caused two beaked whales to strand is a matter of considerable debate (see Cox *et al.*, 2004). NMFS believes that scientifically, these events do not constitute evidence that seismic surveys have an effect similar to that of mid-frequency tactical sonar. However, these incidents do point to the need to look for such effects during future seismic surveys. To date, follow-up observations on several scientific seismic survey cruises have not indicated any beaked whale stranding incidents.

Engel *et al.* (2004), in a paper presented to the International Whaling Commission (IWC) in 2004 (SC/56/E28), mentioned a possible link between oil and gas seismic activities and the stranding of eight humpback whales (seven off the Bahia or Espirito Santo States and one off Rio de Janeiro, Brazil). Concerns about the relationship between this stranding event and seismic activity were raised by the International Association of Geophysical Contractors (IAGC). The IAGC (2004) argues that not enough evidence is presented in Engel *et al.* (2004) to assess whether or not the relatively high proportion of adult strandings in 2002 is anomalous. The IAGC contends that the data do not establish a clear record of what might be a ''natural'' adult stranding rate, nor is any attempt made to characterize other natural factors that may influence strandings. As stated previously, NMFS remains concerned that the Engel *et al.* (2004) article appears to compare stranding rates made by opportunistic sightings in the past with organized aerial surveys beginning in 2001. If so, then the data are suspect.

Second, strandings have not been recorded for those marine mammal species expected to be harassed by seismic in the Arctic Ocean. Beaked whales and humpback whales, the two species linked in the literature with stranding events with a seismic component are either extralimital or not located in the Chukchi Sea where shallow hazard and site clearance survey would occur. Moreover, NMFS notes that in the Arctic, marine mammal observation and monitoring have been conducted by the industry during periods of industrial activity (and by MMS during times with no activity). No strandings or marine mammals in distress have been observed during these surveys; nor reported by NSB inhabitants. Finally, if bowhead and gray whales react to sounds at very low levels by making minor course corrections to avoid seismic noise and mitigation measures require AES to ramp-up the seismic array to avoid a startle effect, strandings are highly unlikely to occur in the Arctic Ocean. Ramping-up of the array will allow marine mammals the opportunity to vacate the area of ensonification and thus avoid any potential injury or impairment of their hearing capabilities. In conclusion, NMFS does not expect any marine mammals will incur serious injury or mortality as a result of AES' shallow hazard and site clearance survey in the Chukchi Sea in 2008.

Comment 18: The CBD states that NMFS failed to adequately specify AES' activities and impacts of vessels because neither AES' application nor NMFS' FR Notice of the Proposed IHA mention the various transit routes through U.S. waters in the Bering, Chukchi and/or Beaufort Seas that these vessels associated with AES' surveys would take.

Response: The specified activity that has been proposed and for which an IHA has been requested is the use of seismic airguns to conduct oil and gas exploration. While the support vessels play a role in facilitating seismic operations, NMFS does not expect these operations to result in the incidental take of marine mammals. Since these support vessels are typically slow-moving, any risk of vessel collisions with marine mammals is expected to be minimal. Moreover, normal shipping and transit operations do not rise to a level requiring an authorization under the MMPA. To require IHAs and LOAs for standard shipping would reduce the ability of NMFS to review activities that have a potential to cause harm to marine mammal populations.

Comment 19: The AEWC and NSB state that a ''small take'' finding cannot be supported with actual data for the proposed AES shallow hazard and site

clearance survey, therefore, placing NMFS in the position of having to make an arbitrary decision. In addition, the CBD states that NMFS did not make the distinction between ''small number'' and ''negligible impact'' while making the decision in the FR Notice of the Proposed IHA.

Response: NMFS does not agree with the CBD's statement. The analysis provided in the FR Notice of the Proposed IHA clearly described in detail the numbers of bowhead, gray, and beluga whales, and ringed and bearded seals that may be potentially taken by Level B harassment as a result of the seismic operations in the Chukchi Sea. (Take estimates for pinnipeds have since been revised based on the 160–dB rms threshold.) As clearly stated in the aforementioned **Federal Register** notice, take numbers of these species represent 0.06, 0.06, and 0.6 percent of the western Arctic stock of bowhead (population estimated at 10,545), eastern North Pacific stock of gray (population estimated at 18,178), and eastern Chukchi stock of Beluga whales (population estimated at 3,710), respectively; and 3.96 and 0.438 percent of the Alaska stocks of ringed (population estimated at 249,000 in the Chukchi Sea) and bearded seal (population estimated at 250,000 - 300,000 in the Bering and Chukchi Seas) populations within the Chukchi Sea, respectively. Although no take number was estimated for humpback, fin, minke, and killer whales, harbor porpoises, and spotted and ribbon seals in the vicinity of the project area due to their rare presence based in the Chukchi Sea, NMFS believes that the harassment of these species would be much less likely than those of bowhead and beluga whales and ringed and bearded seals. NMFS believes that the numbers for all affected species are small relative to their stock size. Separate detailed analyses on the levels of take by noise exposure and cumulative impacts to these marine mammal species and stocks from a wide spectrum in the past, current, and foreseeable future were also conducted and described in the aforementioned **Federal Register** notice, the MMS 2006 PEA, and NMFS 2008 SEA. These analyses led NMFS to conclude that while behavioral modifications, including temporarily vacating the area during the project period may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless found that this action would result in no more than a negligible impact on the affected marine mammal species and/or stocks. NMFS also found that the proposed action would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. Please refer to the **Federal Register** notice (73 FR 22922, April 28, 2008), MMS 2006 PEA, and NMFS 2008 SEA for a detailed description of the analysis.

Comment 20: The CBD points out that AES only provided estimates for exposure to sounds greater than 170 dB re 1 microPa (rms) for pinnipeds, and that NMFS has in the previous IHAs rejected this threshold. The CBD further points out that neither NMFS nor ASRC provide any estimate of how many pinnipeds would be exposed to sounds greater than 160 dB.

Response: To be consistent with NMFS' Level B behavioral harassment criteria for pinnipeds, NMFS will continue to use 160 dB re microPa as the threshold of onset for Level B behavioral harassment, as noted in this document. The estimated numbers of pinnipeds that could be exposed to SPLs by AES' activities have been recalculated based on NMFS' application of the 160–dB rms threshold and are described in this **Federal Register** notice (see response to comment 19). Nevertheless, it is important to note that even with the 160 dB criteria, NMFS expects that only small numbers of pinnipeds would be exposed to seismic noises that could cause Level B behavioral harassment. In addition, research by Moulton and Lawson (2002) showed that most pinnipeds exposed to seismic sounds lower than 170 dB do not visibly react to that sound, and, therefore, pinnipeds are not likely to react to seismic sounds unless they are greater than 170 dB re 1 microPa (rms). While the number of potential exposures of pinnipeds at 170 dB is smaller than that at 160 dB, the overall environmental effect of received sound levels at 170 dB versus 160 dB is expected to be similar based on the best available science.

Comment 21: The CBD and NSB state that NMFS' estimates of the number of marine mammals that may be harassed based on the assumption that sounds below 160 dB re 1 microPa (rms) do not constitute harassment is incorrect because an activity can constitute harassment if it has the ''potential'' to affect marine mammal behavior. In addition, the CBD argues that 160 dB threshold for belugas is similarly flawed, as it points out in previous IHA notices, NMFS has acknowledged the impacts of sounds on beluga even at significant distances from a sound source (up to 20 km).

Response: NMFS does not agree with CBD and NSB's statement. As stated in the MMPA, Level B harassment is defined as any act of pursuit, torment, or annoyance which ''has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' Activities that affect marine mammal behavior briefly but not cause disruption of behavioral patterns are not considered ''takes.''

In addition, in regard to impacts to marine mammal behaviors, distance is not the only factor that counts. The received levels at which marine mammals are affected are related to a number of factors including source levels, distances, and acoustic propagation pathways. The particular example CBD brought up regarding the seismic surveys by the National Science Foundation used airgun arrays with total discharge volume of 2,840 in^3, while the proposed AES shallow hazard and site clearance survey would only use an airgun array with total discharge volume of 40 in^3. The different source levels determine the ensonified zone where marine mammals, including beluga whales, would be impacted.

Comment 22: The CBD and NSB state that NMFS has no idea of the actual population status of several of the species subject to the proposed IHA. For example, in the most recent Stock Assessment Reports (SARs) prepared pursuant to the MMPA, NMFS acknowledges it has no accurate information on the status of ribbon, spotted, bearded, and ringed seals. CBD and NSB both indicate that without these data, NMFS cannot conclude that surveys which will harass untold numbers of individuals of each species would have no more than a ''negligible impact'' on the stocks.

Response: As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in making its determinations required under the MMPA. The Alaska SAR provides population estimates based on past survey work conducted in the region, and the SAR shows that based on the most recent information, all of these Alaska stocks of ice seal species have robust populations. The proposed survey by AES is not expected to have adverse impacts on ice seals. The activity will last for approximately 60 days in the open-water environment of the Chukchi Sea, where bearded and spotted seals are found only occasionally.

In addition, it is expected that approximately 9,850 and 1,094 ringed and bearded seals would be affected by

Level B behavioral harassment as a result of the proposed shallow hazard and site clearance surveys, respectively, and that these take umbers represent 3.96 and 0.438 percent of the Alaska stocks of ringed and bearded seal populations within the Chukchi Sea, respectively. Although spotted and ribbon seals could also be taken by Level B behavioral harassment as a result of the proposed marine surveys in the Chukchi Sea, the probability of take is very low since their presence is very rare within the proposed project area. Nonetheless, NMFS believes their take numbers would be much lower as compared to those marine mammals whose take numbers were calculated.

Comment 23: Citing research on long term adverse effects to whales and dolphins from whale watching activities (Trites and Bain, 2000; Bain, 2002; Lusseau *et al.*, 2006), Dr. Bain states that Level B behavioral harassment could be the primary threat to cetacean populations.

Response: Although NMFS agrees that long-term, persistent, and chronic exposure to Level B harassment could have a profound and significant impact on marine mammal populations, such as described in the references cited by Dr. Bain, however, those examples do not reflect the impacts of seismic surveys to marine mammals for the proposed AES project. First, whale watching vessels are intentionally targeting and making close approaches to cetacean species so the tourists onboard can have a better view of the animals. Some of these whale/dolphin watching examples cited by Dr. Bain occurred in the coastal waters of the Northwest Pacific between April and October and for extended periods of time (''[r]ecreational and scientific whale watchers were active by around 6 a.m., and some commercial whale watching continued until around sunset.'') Thus multiple vessels have been documented to be in relatively close proximity to whales for about 12 hours a day, six months a year, not counting some ''out of season'' whale watching activities and after dark commercial filming efforts. In addition, noise exposures to whales and dolphins from whale watching vessels are probably significant due to the vessels' proximity to the animals. To the contrary, the proposed 2008 open water shallow hazard and site clearance surveys, along with other potential four seismic activities and existing industrial operations in the Chukchi and Beaufort Seas, do not intentionally approaching marine mammals in the project areas. The two areas situate in a much larger Arctic Ocean Basin which is far away from most human impacts. Therefore, the adverse effects from each activity are remote and spread farther apart, as analyzed in the MMS 2006 PEA and draft EIS. The proposed seismic activities would only be conducted between July and November for a maximum of 100 days, weather permitting. In addition, although studies and monitoring reports from previous seismic surveys have detected Level B harassment of marine mammals, such as avoidance of certain areas by bowhead and beluga whales during the airgun firing, no evidence suggests that such behavioral modification is biologically significant or non-negligible (Malme *et al.*, 1986; 1988; Richardson *et al.*, 1987; 1999; Miller *et al.*, 1999; 2005), as compared to those exposed by chronic whale watching vessels cited by Dr. Bain. Therefore, NMFS believes that potential impacts to marine mammals in the Arctic by shallow hazard and site clearance surveys would be limited to Level B harassment only, and due to the limited scale and remoteness of the projects in relation to a large area, such adverse effects would not accumulate to the point where biologically significant effects would realized.

Comment 24: Dr. Bain states that changes in behavior resulting from noise exposure could lead to indirect injury in marine mammals in the wild. He presented several examples to suggest that marine mammals repeatedly exposed to Level B behavioral harassment could result in Level A takes: (1) Gas bubble lesions in beaked whales due to acoustically mediated bubble growth or rapid ascent by animals after deep diving; (2) a minke whale and harbor porpoises were observed traveling at high speed during exposure to mid-frequency sonar in Haro Strait in 2003, and that exhaustion from rapid flight could lead to heart or other muscle damage, which could cause mortality; (3) citing MMS' (2004) Environmental Assessment on Proposed Oil and Gas Lease Sale 195 in the Beaufort Sea Planning Area (OCS EIS/EA MMS 2004–028) that feeding requires a prey density of 800 mg/m3 and his own observation, Dr. Bain is concerned displacement from high productive feeding areas would negatively affect individual whales, and that small cetaceans such as harbor porpoises would face a risk of death if they are unable to feed for periods as short as 48 - 72 hours; (4) individual killer whales have been observed splitting their pod when frightened by sonar, and that other killer whales' separation from their social units has resulted in death; (5) TTS may lead to harm as a minke whale was nearly struck by a research vessel in the area where one had been observed fleeing mid-frequency sonar; and (6) impaired auditory ability may increase predation as white-sided dolphins were attacked by killer whales due to the noise of the research vessel caused the approach of killer whales undetected by the dolphins.

Response: NMFS agrees that it is possible that changes in behavior or auditory masking resulting from noise exposure could lead to injury in marine mammals under certain circumstances in the world, such as those examples/hypotheses raised by Dr. Bain. However, it is not likely that received sound pressure levels (SPLs) from the shallow hazard and site clearance surveys would drastically cause changes in behavior or auditory masking in marine mammals in the vicinity of the proposed action area. First, marine mammals in the aforementioned examples and hypotheses were exposed to high levels of non-pulse intermittent sounds such as the military sonar, which has been shown to cause flight activities (e.g., Haro Strait killer whales); and continuous sounds such as the vessel, which could cause auditory masking when animals are closer to the source. The sources produced by the acoustic equipment and airguns for the proposed shallow hazard and site clearance surveys are impulse sounds used in seismic profiling, bathymetry, and seafloor imaging. Unlike military sonar, seismic pulses have an extremely short duration (tens to hundreds milliseconds), and relatively long intervals (several seconds) between pulses. Therefore, the sound energy levels from these acoustic equipment and small airguns are far lower in a given time period. Second, the intervals between each short pulse would allow the animals to detect any biologically significant signals, and thus avoid or prevent auditory masking. In addition, NMFS requires mitigation measures to ramp up acoustic sources at a rate of no more than 6 dB every 5 minutes. This ramp up would prevent marine mammals from being exposed to high level noises without warning, thereby eliminating the possibility that animals would dramatically alter their behavior (i.e. from a ''startle'' reaction). NMFS also believes that long-term displacement of marine mammals from a feeding area is not likely because the seismic vessel is constantly moving, and the maximum 160–dB ensonified radius is about 4 km, which would make an ensonified zone of approximately 50 km2 at any given moment, which is a small area compared to the Chukchi

Sea. In reality, NMFS expects the 160–dB ensonified zone to be smaller due to absorption and attenuation of acoustic energy in the water column.

Comment 25: Citing that the difference between takes by subsistence harvest and potential biological removal (PBR) of the Western Arctic stock bowhead whales is about 28 individuals whales, or less than 0.3 percent of the population, Dr. Bain is concerned that the cumulative effects of multiple seismic surveys would not need to be very large to push takes over PBR for bowheads.

Response: NMFS does not agree with Dr. Bain's assessment. None of the five proposed 2008 open water Arctic seismic surveys and shallow hazard and site clearance surveys is expected to result in any Level A harassment (i.e., injury) or mortality. As analyzed in the NMFS 2008 supplemental environmental assessment (SEA) for the issuance of five Arctic seismic surveys and shallow hazard and site clearance surveys, all incidental takes of marine mammals are expected to be Level B behavioral harassment (NMFS, 2008). Therefore, no PBR would be applied for the proposed AES seismic activities and other 2008 seismic activities in the Chukchi and Beaufort Seas.

Comment 26: Citing MMS 2006 Programmatic Environmental Assessment (MMS 2006 PEA) and the MMS 2007 draft Programmatic Environmental Impact Statement (DEIS) for seismic surveys in the Arctic Ocean, Dr. Bain states that he supports the mitigation measures established in these documents that no more than 12 cow/calf pairs and aggregation of feeding or resting bowheads are within the area to be ensonified by 120 dB and 160 dB, respectively. The CBD also states that the monitoring of a 120 dB safety zone for bowhead cow/calf pairs and monitoring of a 160 dB safety zone for large groups of bowhead or gray whales (≤12 individuals) were required by NMFS in 2006 and were practicable. The CBD states that the failure to require such conditions, or at least analyze it, violates the MMPA. Dr. Bain presumes that these numbers (using 120 and 160 dBs) reflect the difference between takes allocated to hunters and the PBR for the stock. Dr. Bain further suggests that this number be applied to all seismic activities combined, not individual seismic surveys, thus, if four seismic surveys occur concurrently, no single survey should be allowed to affect the migration of more than 3 cow/calf pairs or 3 aggregation of feeding or resting bowhead whales.

Response: First, the additional mitigation measures in the MMS 2006 PEA and the MMS 2007 draft PEIS, as well as in the 2007 NMFS SEA for the issuance of an IHA to Shell Offshore Inc. for its open water seismic surveys conducted in the Chukchi and Beaufort Seas in 2007, establish safety (shut-down) zones of 120 dB re 1 microPa for an aggregation of four or more bowhead cow/calf pairs and 160 dB re 1 microPa for an aggregation of 12 or more bowhead or gray whales, not 12 cow/calf pairs as Dr. Bain states in his comment. The rationale for this cautious and conservative approach when addressing the 120–dB and 160–dB safety zones is clearly stated in the MMS 2006 PEA. These additional mitigation and monitoring measures were identified through the analyses to further reduce the potential for adverse environmental impacts and, depending on the scope of seismic-survey activities, could be adopted as requirements for seismic-survey-related marine mammal incidental take authorizations. With respect to CBD's concern that these measures were ''practicable'' in 2006, NMFS has re-evaluated the practicability of requiring aerial monitoring to the 120–dB isopleth in the Chukchi. NMFS has determined that it is not practicable to conduct aerial monitoring to the 120–dB isopleth because aerial surveys have currently been determined to be impracticable due to lack of adequate landing facilities, the prevalence of fog and other inclement weather in that area, thereby resulting in safety concerns. Additionally, these conditions are analyzed in NMFS' 2008 SEA. These numbers have nothing to do with the PBR of the bowhead whale stock, as assumed by Dr. Bain. As discussed in FR Notice of Proposed IHA, the proposed 2008 Arctic seismic surveys and shallow hazard and site clearance surveys are not expected to result in Level A harassment (injury) or mortality.

In addition, Dr. Bain's suggestion of ''breaking up'' the aggregated takes of bowheads into small subsets that can be ''allocated'' to each seismic survey is based on his assumption that these numbers were set by PBR. NMFS does not support this suggestion because it has no scientific support other than assumption. The safety zones of 120–dB for four or more cow/calf pairs and 160–dB for an aggregation of 12 bowhead or gray whales are based on the biology of the bowhead and gray whales as analyzed in the MMS 2007 draft PEIS.

The threshold of four or more fall-migrating bowhead whale cow/calf pairs was set based on the following: (a) cow/calf pairs are identified as the most vulnerable portion of the population and disruption of their biologically significant behaviors or their avoidance of important habitats is more likely to lead to population level impacts; (b) mitigation measures for this portion of the population should be cautiously developed to ensure that takings are at the lowest practicable level and that significance is avoided; (c) bowhead whale cow/calf pairs migrate in groupings or pulses and the observed presence of cow/calf pairs by surveys generally indicates that additional cow/calf pairs are present but unseen; (d) using professional judgment, NMFS and MMS have determined that the presence of four or more cow/calf pairs (as observed during surveys) indicates that enough cow/calf pairs are likely present (but some unseen) in the area in numbers equal to or greater than 12 animals; and (e) the potential for significance to occur therefore increases when four or more bowhead whale cow/calf pairs are observed (MMS, 2007).

The threshold of an aggregation of 12 or more bowhead or gray whales is based on the following premises: (a) whales aggregate in order to communicate and perform ''biologically significant'' behaviors (as defined by NRC, 2005), such as feeding, resting, socializing, mating, and calving; (b) aggregations of animals can also indicate an area of preferred habitat and locations where biologically significant behaviors are likely occurring; (c) disruptions of these biologically significant behaviors and important habitats have a greater potential to lead to population level effects (i.e., result in limiting reproductive potential or recruiting success, impeding important mother/calf bonding); (d) protective measures should be designed to reduce the potential for disruption of biologically significant behaviors or help ensure whales do not avoid important key habitat areas (and thus potentially negate a negligible impact finding under the MMPA); and (e) standard scientific acceptance that the presence of observed whales (i.e., at the surface) during monitoring surveys indicates that additional whales are also present in the area but non-detectable (i.e., below the surface) (MMS, 2007).

Comment 27: Dr. Bain is concerned that the North Pacific right whale is excluded from consideration for the proposed seismic activity in the Chukchi Sea. Citing Nowacek *et al.* (2004), Dr. Bain further states that the [North] Atlantic right whale is less easily disturbed [than the North Pacific right whale], is known to be affected by received levels below 135 dB.

Response: NMFS does not agree with Dr. Bain and believes his concern is

unwarranted. The North Pacific right whales are found in the northern part of the Pacific, such as the Bering Sea and the Gulf of Alaska (Moore *et al.*; 2000; 2002; LeDuc *et al.*, 2001; Waite *et al.*, 2003; Mellinger *et al.*, 2004; Wade *et al.*, 2006). They do not enter Chukchi Sea in the Arctic Ocean, where the proposed seismic activity is planned. In addition, NMFS is not able to verify Dr. Bain's statement that the North Atlantic right whale is less easily disturbed than the North Pacific right whale, since he did not provide a supporting reference.

Comment 28: Dr. Bain is concerned that many species are sedentary, territorial, or have strong tendencies toward site fidelity, and that these species are unlikely to move away from a noise source. In addition, Dr. Bain is concerned that many predators are used to experiencing pain during feeding, and hence tolerate pain [from being exposed to loud noise] rather than abandoning their prey (e.g., many mammals involved in fishery-interactions).

Response: First, the monitoring and mitigation measures described in this document and implemented for the proposed open water seismic activity would prevent any marine mammals from being exposed to received levels that could cause onset of injury (180 dB re 1 microPa for cetaceans and 190 dB re 1 microPa for pinnipeds). Second, there are no sedentary marine mammals. The proposed seismic activity is fundamentally different from commercial fisheries activity in which the appearance of a seismic vessel does not reinforce the marine mammal with food or prey, therefore, it is unlikely that predatory marine mammals would approach the seismic vessel or acoustic source while searching for prey. Even if a marine mammal happens to be in close vicinity of the vessel or source, monitoring and mitigation measures will required the crew to power-down or shut-down the acoustic sources so that the animal will not be affected by Level A harassment.

Comment 29: Dr. Bain comments on NMFS' and AES' method of calculating estimated take numbers of marine mammals by multiplying the ''strip width'' by the length of the survey, and states that ''[f]or bowheads, some studies showed behavioral changes in nearly all whales out to 20 km, and in many cases to at least 30 km.'' Dr. Bain further states that ''belugas and bowheads are known to be affected at 10 - 20 km or more.'' At such, Dr. Bain observes that the ramp-up procedures would not be effective as it would take about 5 hours for the bowheads [near the source] to move to a distance of 30 km, and marine mammal monitoring over a distance of 20 km is very difficult.

Response: First, the estimated takes of marine mammals were calculated by multiplying the expected average animal densities by the area of ensonification for the 160 dB re 1 microPa (rms) and 170 dB re 1 microPa (rms) isopleths, for cetaceans and pinnipeds, respectively. The area of ensonification was determined by multiplying the total proposed trackline (760 km or 410 nm) times 2 (both sides of the trackline) times the distance to the 160–dB or 170–dB isopleths (not ''strip width,'' a term usually used in the population survey, as stated by Dr. Bain in his comment).

NMFS cannot verify Dr. Bain's statement that ''some studies showed behavioral changes in nearly all whales out to 20 km, and in many cases to at least 30 km'' and that ''belugas and bowheads are known to be affected at 10 - 20 km or more,'' since he did not provide any supporting references. Neither did Dr. Bain provide the source levels and displacement volumes of the airgun arrays in which these studies were conducted, nor the severity of the behavioral changes by the whales. Nevertheless, it is important to understand that the distance from the seismic sources where bowheads or other marine mammals can be affected depends on the source levels of the airgun arrays, which is also related to the size, or displacement volume of the airgun array. It is possible that if a large airgun array was used in the seismic survey, the received level at 20 to 30 km distance could still be high enough to cause behavioral changes (or behavioral harassment) by the bowhead whales. However, for the proposed shallow hazard and site clearance surveys, the source levels of the airgun array and other acoustic equipment are relatively low (about 214 dB re 1 ?Pa for the GeoChirp II, the loudest acoustic equipment planed to be used), and that the modeled distance to the 160–dB isopleths is estimated at 4,000 m (13,123 ft). Please see Number of Marine Mammals Estimated to be Taken section below for a detailed description of the calculation.

As far as mitigation measures are concerned, NMFS expects that the distance from the source to the safety zone for cetaceans is approximately 185 m (607 ft), where the received level is at 180 dB re 1 microPa, which is a small enough area to be effectively monitored by NMFS-approved marine mammal monitors (MMOs). Furthermore, no seismic surveys, ramp up included, will commence if there is a marine mammal within the safety zone.

Comment 30: Citing the 90–day monitoring report for the SOI 2007 open water seismic activities, the NVPH is concerned that the shallow hazard and site clearance surveys could exclude nearly all migrating bowhead whales from waters within 20 km or more of the survey vessel, since the 120–dB isopleth extends over 25 km. The NVPH states that similar displacement of beluga whales at large distance is also possible.

Response: NMFS does not agree with NVPH's assessment regarding the potential acoustic impacts to bowhead and beluga whales. First, as discussed in Response to Comment 5, although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals are taken by Level B harassment (see definition of Level B harassment above). The degree of reaction which constitutes a ''take,'' i.e., a reaction deemed to be biologically significant that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc. of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. In many cases, bowhead or beluga whales that are exposed to 120 dB re 1 ?Pa or higher do not exhibit noticeable behavioral changes (e.g., Malme *et al.*, 1984; Richardson *et al.*, 1986; 1999; Miller *et al.*, 2005). Second, only migrating bowhead whales showed behavioral disturbance in a biologically significant manner from exposure to seismic airgun at received level around 120 dB re 1 microPa (Richardson *et al.*, 1999). The proposed shallow hazard and site clearance surveys would be concluded by September 25, before the fall migrating bowhead whales arrive the Chukchi Sea. Therefore, NMFS does not believe that bowhead and beluga whales would be displaced when exposed to received level from seismic airguns at 120 dB re 1 microPa.

Comment 31: The NSB states that if AES conducts surveys into October or November, it would also encounter belugas from the Beaufort Sea stock as the animals are migrating toward wintering areas. There are no density estimates for belugas (or other marine mammals) during the darker months of October and November. The NSB further suggests allowing AES to conduct surveys until late October.

Response: AES will complete its shallow hazard and site clearance

surveys by September 25, as stated in this document.

Subsistence Uses

Comment 32: NVPH states that NMFS did not present a preliminary determination that AES' shallow hazard surveys would not have an unmitigable adverse impact on the availability of affected marine mammal populations to subsistence hunters in coastal villages of the Chukchi Sea in the FR Notice of Proposed IHA. NVPH further states that NMFS failed its basic duty under the MMPA and its regulations to make a proposed determination available to the public to scrutinize and comment on. NVPH requests that NMFS issue another **Federal Register** notice to set forth the full scope of its required proposed findings and afford an opportunity for the public to comment on the adequacy of NMFS' assessment of the adverse effect of AES' shallow hazard surveys on the availability of seals and whales for subsistence uses.

Response: NMFS does not agree with NVPH's statement. A detailed analysis on the subsistence harvest of marine mammals by Alaskan natives in and around the Chukchi Sea was provided in the FR Notice of Proposed IHA. NMFS also understands that as part of the application for the IHA, AES has developed a Plan of Cooperation (POC) with the Native communities. The POC specifies measures AES would take to minimize adverse effects on marine mammals where proposed activities may affect the availability of a species or stock of marine mammals for Arctic subsistence uses or near a traditional subsistence hunting area. In addition, AES has conducted POC meetings for its seismic operations in the Chukchi Sea in Barrow, Wainwright, Point Lay, and Point Hope, and with the Alaska Eskimo Whaling Commission (AEWC). AES also indicated to NMFS that a Conflict Avoidance Agreement would be signed with the AEWC prior to its proposed seismic activities in the Chukchi Sea. Furthermore, NMFS has preliminarily determined that the impact of conducting the shallow hazard and site clearance surveys in the Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of marine mammals. Therefore, although NMFS did not specifically include its preliminary determination that the proposed shallow hazard and site clearance surveys by AES would have an unmitigable adverse impact on the availability of affected marine mammal populations to subsistence hunters in coastal villages of the Chukchi Sea, the analysis provided in the FR Notice of Proposed IHA supports such a determination.

NMFS also does not believe that NVPH's request of issuing another **Federal Register** notice is warranted. The FR Notice of Proposed IHA provided a 30–day comment period and plenty opportunity for the public to comment on AES' proposed shallow hazard and site clearance surveys in the Chukchi Sea and NMFS preliminary determination to issue an IHA to AES for the said proposed activity.

Comment 33: NVPH questions whether NMFS's assessment of the impacts to subsistence was based on the ''best available scientific evidence'' and whether NMFS has made any effort to discern whether seismic surveying activities in the Chukchi Sea in 2006 or 2007 had an adverse impact on the availability of any or all seal and whale species for subsistence uses.

Response: In making its final determination of whether the proposed shallow hazard and site clearance surveys would have unmitigable impacts to subsistence use of marine mammal populations in the affected area, NMFS relies upon the best available scientific information to make its MMPA determinations. In this case, NMFS has reviewed the 90–day marine mammal monitoring and mitigation reports for the 2006 and 2007 open water seismic survey and shallow hazard and site clearance survey conducted by Shell Offshore, Inc. (SOI), ConocoPhillips Alaska, Inc., and GXTechnology in 2006 and by SOI in 2007 (Ireland *et al.*, 2007a; 2007b; Patterson *et al.*, 2007; Funk *et al.*, 2007; 2008). These monitoring reports point out that the potential impacts to marine mammals as a result from the 2006 and 2007 Arctic seismic activities were negligible. In addition, actual take of marine mammals by Level B harassment was generally lower than expected due to the implementation of monitoring and mitigation measures. No marine mammals were observed to have suffered injuries or death as a result of the seismic surveys and none were suspected. In addition, information presented by the oil and gas industry and independent researchers who conducted marine mammal monitoring at the 2007 and 2008 Arctic Open Water Scientific Meetings was also taken into consideration.

Comment 34: NVPH states that NMFS failed to provide the substantive analysis to support any meaningful finding regarding the possible effect of AES' activities on the availability of beluga whales, seals, and bowhead whales for subsistence uses by coastal communities along the Chukchi Sea or the effectiveness of mitigation measures to eliminate such impacts. The NVPH further states that the Chukchi Sea and the adjoining coast existed as a relatively pristine ocean environment, free of industrial operations that would disturb bowhead and beluga whales and seals with their availability for subsistence uses. Therefore, NVPH states that even a slight interference with the availability of these species to communities on the Chukchi Sea would constitute an unmitigable adverse impact to their overall availability for subsistence uses.

Response: NMFS does not agree with NVPH's statement. The FR Notice of Proposed IHA provided a detailed analysis regarding the possible effect of seismic surveys and underwater sound on marine mammals in the planned action area. This analysis prompted NMFS to make a preliminarily determination that the impact of conducting the shallow hazard and site clearance surveys in Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of marine mammals.

NMFS agrees that the Chukchi Sea and the adjoining coast existed as a relatively pristine ocean environment that was free of industrial operations, however, NMFS does not agree with NVPH's assessment that within this environment, a slight interference with the availability of these species to communities on the Chukchi Sea would constitute an unmitigable adverse impact for subsistence uses of these species. The proposed shallow hazard and site clearance surveys proposed by AES would only occur in a small area within the much larger Chukchi Sea basin for a brief period of 60 days. Furthermore, mitigation and monitoring measures required for the seismic activities would reduce all potential impacts to negligible levels to marine mammals and their habitat. In addition, AES will be working with Native communities in the affected region to ensure that seismic operations do not result in an unmitigable adverse impact on the availability of marine mammals to subsistence uses by the Native communities in and around the Chukchi Sea.

Comment 35: The CBD and NSB state that the MMPA requires that any incidental take authorized will not have ''an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses'' by Alaska Natives. The NSB is concerned about impacts to subsistence hunts of marine mammals early in the summer. The NSB points out that the beluga hunt at Point Lay typically occurs between June 20

and July 10. Additionally, CBD notes they are aware that the NVPH, a federally recognized tribal government, has submitted comments opposing the proposed take authorizations due to impacts on subsistence, and along with many community members has commented on myriad other related agency documents that have direct bearing on these take authorization such as the Chukchi Sea Sale 193, MMS Five-Year Plan, and the DPEIS. Similarly, the NSB, the AEWC, and REDOIL have all filed challenges in federal court and/or the IBLA challenging offshore activities due to impacts on the subsistence hunt of bowheads and other species. In light of the positions of these communities and organizations, the CBD does not think that NMFS can lawfully make the findings required under the MMPA for approving AES' proposed IHA.

Response: NMFS does not agree with CBD and NSB's statement. The AES shallow hazard and site clearance survey will not start after July 15, after the spring subsistence hunt of marine mammals. NMFS believes that the concerns expressed by subsistence hunters and their representatives have been addressed by NMFS in this FR Notice and other supporting documents prepared or relied upon by NMFS in issuing the AES IHA.

Comment 36: The AEWC states that under current Federal rules, protections for the subsistence uses are little more than an after-thought in Federal regulation, since they do not become effectively relevant until after exploration or development permits are issued. When these protections do come into play, at the point of IHA or LOA review, companies already have been allowed to address, substantively, mitigation or risk-reduction measures for likely impacts to the resources and lives of Alaskan natives. In addition, the AEWC states that Federal law do not require consultation with the native coastal communities until after offshore exploration and development plans have been finalized, permitted, and authorized. Then at the point at which these requirements do come into play, Federal agencies, including NMFS, are reluctant to give teeth to the very minimal protections articulated in the MMPA.

Response: NMFS does not agree with the AEWC's statement. Under sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*), an IHA or LOA would be granted to U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if NMFS finds that the taking of marine mammals will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. In other words, no marine mammal take authorizations may be issued if NMFS has reason to believe that the proposed exploration or development activities would not have an unmitigable adverse impact on the availability of marine mammal species or stock(s) for Alaskan native subsistence uses. Although Federal laws do not require consultation with the native coastal communities until after offshore exploration and development plans have been finalized, permitted, and authorized, pre-permitting consultations between oil and gas industries and the Alaskan coastal native communities are considered by NMFS when the agency makes a determination whether such activities would have an unmitigable adverse impact on the availability of marine mammal species or stock(s) for subsistence uses. For the proposed shallow hazard and site clearance survey, AES has conducted POC meetings for its seismic operations in the Chukchi Sea in Barrow, Wainwright, Point Lay, and Point Hope, and with the Alaska Eskimo Whaling Commission. AES also indicated to NMFS that a CAA would be signed with the AEWC prior to its proposed seismic activities in the Chukchi Sea.

Comment 37: The AEWC notes that NMFS and the AEWC share management responsibility for bowhead whales and for the bowhead whale subsistence hunt through the NOAA-AEWC Cooperative Agreement. The AEWC asserts that Alaska Native citizens who are part of the Agreement should be provided an opportunity to consult directly on all proposed actions affecting bowhead whales, rather than mere notice that NMFS has made a decision concerning the issuance or proposed issuance of authorizations to take marine mammals.

Response: There are numerous opportunities, including the Cooperative Agreement, in which Alaska Native citizens can play a role in matters affecting bowhead whales. These include, but are not limited to, the MMPA's requirement that proposed notices of IHAs be published in the **Federal Register** for a 30–day comment period; the requirement in NMFS' regulations that oil and gas companies seeking take authorizations consult directly with Alaska Native communities to address subsistence use issues (i.e., development and submission of a Plan of Cooperation); the sharing of information between applicants and Alaska Native citizens; and annual stakeholder meetings in Alaska to discuss oil and gas development (i.e., open-water meetings).

Comment 38: NVPH states that NMFS failed to discuss a mandatory limit on the number of concurrent seismic and/or shallow hazard surveys in the Chukchi Sea. NVPH requests NMFS to prohibit the simultaneous operation of multiple vessels within the Chukchi Sea during the fall bowhead migration. NVPH further requests that NMFS require that no two vessels operate within 100 km (62 mi) of one another, because given the large size of the 120 dB zone, closer simultaneous operation would pose a real risk of disrupting the bowhead whale migration.

Response: NMFS does not agree with NVPH's statement and request. First, the MMS 2006 PEA, which NMFS incorporated into its 2008 SEA, provided a thorough analysis on the maximum number of eight seismic activities that could occur in the Chukchi and Beaufort Seas. The analysis lead NMFS and MMS to conclude that up to a maximum of eight seismic surveys would not result in significant impacts to the quality of the human environment. In addition, NMFS' 2008 SEA, which analyzed the effect of multiple seismic surveys also lead NMFS to conclude that the AES survey would not result in a significant impacts.

NVPH has not provided NMFS with any data to support its argument that multiple seismic vessels should not be permitted in the Chukchi Sea or that no more than 2 vessels be allowed to operate within 100 km (62 mi) of one another. As mentioned above, NMFS and MMS analyzed the environmental effects of conducting multiple seismic surveys in both the Beaufort and Chukchi Seas. NMFS and MMS evaluated each seismic permit under the applicable NEPA document (i.e., the 2006 PEA, 2007 SEA and 2008 SEA) to determine whether the action would result in significant effects. In AES' case, NMFS has determined that the shallow hazard and site clearance surveys would not result in significant effects to the quality of the human environment. The 100 km (62 mi) separating distance for the 120 dB zone between vessels is also not scientifically supportable. The distance where the received level reaches 120 dB re 1 microPa is dependent upon the source level and oceanographic conditions. For the same oceanographic condition, the

higher the source level, the longer the distance where the received level would reach 120 dB. Therefore, NMFS considers that the 100 km (62 mi) separation distance is arbitrary and baseless.

Mitigation and Monitoring

Comment 39: Dr. Bain questions about the effectiveness of marine mammal monitoring with only two MMOs on duty full time. Citing Forney and Barlow (1998) and Dahlheim and Towell (1994), Dr. Bain states that a common work schedule where consistent effort is required would be 40 minutes on, 40 minutes off, 40 minutes on, two hours off, three times a day. Dr. Bain suggests that an observation team of 12 MMOs would be required to cover a 24–hour period. Dr. Bain further states that the probability of detecting marine mammals would drop with increased distance from the vessel.

Response: NMFS does not agree with Dr. Bain's assessment and suggestions regarding MMOs and marine mammal monitoring. NMFS reviewed the references (Dahlheim and Towell, 1994; Forney and Barlow, 1998) provided by Dr. Bain, and did not find any type of work schedules described. Unlike observers during marine mammal population surveys who are required to search the entire field for any marine mammals, the primary responsibility for MMOs is to monitor the safety zones, which in this case are 185 m (607 ft) radius for the 180–dB isopleths and 40 m (131 m) radius for the 190–dB isopleths, and to ensure that proper mitigation measures (power-down or shut-down acoustic sources) are implemented if a marine mammal enters or is sighted within these safety zones. NMFS agrees that the detection probability of a marine mammal drops with increased distance from the ship. However, the occurrence of marine mammals outside the safety zones is not a big concern for marine mammal monitoring during the proposed seismic activity because it is presumed these animals would not be within a zone that could result in injury. In addition, all MMOs hired for the proposed seismic surveys must be NMFS-approved observers who are qualified to perform the required monitoring tasks.

Comment 40: Dr. Bain is concerned that many species that are capable of diving for more than 30 minutes could be missed during the monitoring.

Response: NMFS agrees with Dr. Bain that for deep diving marine mammals it pose a challenge for monitoring. However, within the proposed seismic survey area, there are no marine mammals that normally dive for more than 30 minutes. However, in the event that a marine would be missed during the initial pre-survey monitoring, ramp-up procedures will be followed when an acoustic source begin to operate, so the undetected animal(s) would have an opportunity to detect the sound as it increases gradually and move away from the source. Please refer to Monitoring and Mitigation Measures section below for a detailed description.

Comment 41: NVPH is concerned that NMFS did not discuss the option of requiring AES to power down its airguns and other sound sources when aggregations of feeding, resting or socializing bowhead whales or gray whales are located within the 160 dB isopleths, and that NMFS fails to discuss the option of requiring AES to monitor the 120 dB isopleths for bowhead cow-calf pairs and to require AES to power down its sound sources when four or more cow-calf pairs are observed to be exposed to noises at or above 120 dB. NVPH requests NMFS to have both of these mitigation measures. Citing Richardson's observation, NVPH further states that nearly all bowhead whales avoid seismic airguns at received levels as low as 107 dB, and requests NMFS to impose a safety zone for bowhead cow-calf pairs exposed to 107 dB or more. In addition, as NVPH observes that it would be impossible to monitor such a large area be ship-based observation, NVPH requests that such monitoring be conducted by aerial observation together with ship-based observers, for both of these safety zones.

Response: In its final determination and the IHA issued to AES, NMFS requires AES to establish a 160–dB safety zone whenever an aggregation of 12 or more bowhead whales or gray whales are observed. If an aggregation of 12 or more bowhead or gray whales is observed within the 160–dB safety zone around the seismic activity, the seismic operation will not commence, or will shut down, until two consecutive vessel surveys indicate they are no longer present within the 160–dB safety zone of seismic-surveying operations.

However, NMFS will not impose a requirement to conduct aerial monitoring of the 120–dB safety zone for the occurrence of four ore more cow-calf pairs in the Chukchi Sea because it is not practicable. First, the 120–dB safety zone would require a safety zone of 20 km (12 mi) in radius, which is beyond the range for visual monitoring. The 120–dB ensonified zone is also too large to be monitored by chase boats. Second, aerial surveys are not required in the Chukchi Sea because they have currently been determined to be impracticable due to lack of adequate landing facilities, the prevalence of fog and other inclement weather in that area, thereby resulting in safety concerns. Third, the proposed AES shallow hazard and site clearance would be completed by September 25, before the large number of bowhead whales migrate pass the Chukchi Sea.

As far as the NVPH's statement that nearly all bowhead whales avoid seismic airguns at received levels as low as 107 dB, NMFS is not able verify NVPH's assessment because NVPH did not provide a reference to support its statement. A comprehensive review by Southall *et al.* (2007) on the potential acoustic impacts to low-frequency cetaceans (bowhead and other large whales) does not list any reference that shows these animals react to received levels under 110 dB re 1 microPa, regardless of severity. Therefore, NMFS does not believe bowhead whales exposed to 107 dB would be taken by Level B behavioral harassment, and that imposing a safety zone of 107 dB is not appropriate.

Comment 42: NVPH states that NMFS failed to provide for peer review of AES' proposed monitoring plans. It further states that the presentation provided by AES at the 2008 Open Water Scientific Meeting only gave very limited information and was unable to respond to even the most basic questions raised by attendees. NVPH requests NMFS to reject any suggestion that the meeting satisfied the peer review requirement. NVPH states that peer review by independent, objective reviewers remains necessary.

Response: In order for the independent peer-review of Arctic area activity monitoring plans, it must be conducted in an open and timely process. Review by organizations, such as the National Academy of Sciences, would take at least a year to complete and would likely provide for an inflexible monitoring plan (e.g., any modifications would require reconvening the Committee). As a result, NMFS believes that independent peer-review of monitoring plans can be conducted via two means. First, the monitoring plans are made public and available for review by scientists and members of the public in addition to scientists from the NSB, NMFS, and the FWS. In accordance with the MMPA, the Marine Mammal Commission's Committee of Scientific Advisors reviews all IHA applications, including the monitoring plans. Second, monitoring plans and the results of previous monitoring measures are reviewed once or twice annually at public meetings held with the industry, the AEWC, the NSB, Federal agencies

and the public. AES' mitigation and monitoring plan was reviewed by scientists and stakeholders at a meeting in Anchorage between April 14, 2008, and April 16, 2008, and by the public between April 28, 2008 (73 FR 22922) and May 28, 2008. NMFS believes that it has met the requirements of section 101(a)(5)(D) of the MMPA.

Comment 43: The CBD, NSB, Dr. Bain, and Dr. Steiner state that during night-time and poor visibility condition, AES proposes essentially no limitations on operations, even though the likelihood of observers seeing marine mammals in such conditions is very low. The CBD and Dr. Steiner recommend prohibiting seismic surveying when conditions prevent observers from detecting all marine mammals in the safety zone. One private citizen requests NMFS to clarify whether seismic sources are to be restarted in low visibility conditions.

Response: The IHA issued to AES does not allow the start up of acoustic sources when the entire safety zones cannot be adequately monitored. However, as stated in the FR Notice of Proposed IHA, once the safety zones are visually established and that pre-survey monitoring has concluded that there is no marine mammals within the safety zones, seismic surveys can commence and continue into low visibility conditions. However, if for any reasons the seismic sources are stopped during low visibility conditions, they are not to be restarted until the conditions are suitable for the marine mammal visual monitoring so that the safety zones can be reestablished. Nevertheless, ramping up of airguns and other seismic equipment during under normal visual conditions is expected to keep marine mammals from entering the established safety zones. Please refer to Monitoring and Mitigation Measures section below for a detailed description.

Comment 44: The CBD and NSB state that in its treatment of passive acoustic monitoring (PAM), NMFS and AES are also deficient. While past IHAs have required PAM, this IHA completely ignores even discussing the possibility of using such monitoring.

Response: NMFS disagrees. The MMPA has not established standards for monitoring requirements. The monitoring requirements proposed are to ensure that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Monitoring measures are also used to reduce the level of takes to the lowest level practicable due to implementation of the mitigation measures.

Monitoring measures for different projects are proposed on a case-by-case basis, and there is no ''one size fits all'' type of monitoring protocol. For the proposed shallow hazard and site clearance survey in the Chukchi Sea, the radius of the safety zone (185 m, or 607 ft) based on the 180 db re: 1 microPa isopleths is too small to allow accurate and effective passive?? acoustic monitoring. As the Joint Nature Conservation Committee (JNCC, 2004) stated that in practice the exclusion zone (safety zone) needs to be more than 500 m (1,640 ft) to allow for accurate passive acoustic monitoring (PAM). JNCC also noted that in many cases PAM is not as accurate as visual observation when determining range. NMFS believes that in the subject seismic survey projects, where the safety zone is as small as 185 m (607 ft), passive acoustic monitoring is not warranted. The presence of additional vessels for deploying PAM would only introduce more noise to the small area where the proposed projects are to occur.

NEPA

Comment 45: NVPH, CBD, and the NSB state that NMFS must prepare an Environmental Impact Statement (EIS) to evaluate AES' shallow hazard surveys, together with the other seismic and shallow hazard surveying activity proposed for the summer of 2008 in the Beaufort and Chukchi Seas.

Response: NMFS prepared a Final SEA to analyze further the effects of AES' (and other companies) proposed open-water shallow hazard and site clearance survey activities for the 2008 season. NMFS has incorporated by reference the analyses contained in MMS 2006 Final PEA for Arctic OCS Seismic Surveys in the Beaufort and Chukchi Seas and has also relied in part on analyses contained in the MMS 2007 FEIS for the Chukchi Sea Lease Sale 193, the MMS 2003 FEIS for multiple lease sales, and the MMS 2007 DPEIS submitted for public comment on March 30, 2007.

The 2006 PEA analyzed a broad scope of proposed seismic activities in the Arctic Ocean. In fact, the PEA assessed the effects of multiple, ongoing seismic surveys (up to 8 surveys) in the Beaufort and Chukchi Seas for the Arctic open water season. Although AES' proposed activity for this season was not explicitly identified in the 2006 PEA, the PEA did contemplate that future seismic activity, such as AES' could occur. NMFS believes the range of alternatives and environmental effects considered in the MMS 2006 PEA, combined with NMFS' SEA for the 2008 season are sufficient to meet the agency's NEPA responsibilities. In addition, the 2008 SEA includes new information obtained since the 2006 Final PEA was issued, including updated information on cumulative impacts. NMFS also includes a new section in the 2008 SEA, which provides a review of the 2006 and 2007 monitoring reports. As a result of our review and analysis, NMFS has determined that it was not necessary to prepare and issue an EIS for the issuance of an IHA to AES in 2008 for seismic activity in the Chukchi Sea but that preparation of an SEA and issuance of a Finding of No Significant Impact (FONSI) were sufficient under NEPA.

Comment 46: The NSB and CBD state that NMFS appears to rely on the NEPA analysis in the DPEIS in clear violation of NEPA law. They state that NEPA requires agencies to prepare a draft EIS, consider public and other agency comments, respond to these comments in its final EIS, and wait 60 days before issuing a final decision. The CBD further states that before the record of decision has been issued on the final PEIS, NMFS cannot authorize AES' proposed seismic surveys because the purpose of the PEIS process is to consider seismic surveys in the Chukchi and Beaufort Seas for the years 2008 and beyond. The CBD states that NMFS seems to either be relying on a NEPA document that is not just inadequate, but which by its very terms only covers activities from two years ago (the 2006 PEA), or one which is nowhere near complete (the 2007 DPEIS).

Response: See Response to Comment 44 on this concern. Contrary to the NSB's and CBD's statement, NMFS relied on information contained in the MMS 2006 Final PEA, as updated by NMFS' 2008 SEA for making its determinations under NEPA and that the DPEIS was not the underlying document to support NMFS' issuance of AES' IHA. NMFS merely relied upon specific pieces of information and analyses contained in the DPEIS to assist in preparing the SEA. It is NMFS' intention that the PEIS currently being developed will be used to support, in whole, or in part, future MMPA actions relating to oil and gas exploration in the Arctic Ocean. Additionally, NMFS believes that a SEA is the appropriate NEPA analysis for this season as the amount of activity for 2008 is less than what was analyzed in the 2006 PEA.

Comment 47: NVPH states that the MMS 2006 PEA is flawed since it understates the risk of significant impacts to bowhead whales, and

therefore, it is inappropriate for NMFS to rely on that document. NVPH states that the 2006 PEA assumed the source vessels would ensonify much smaller zones than those which have been subsequently measured in the field. NVPH states that based on the propagation actually measured in 2006 and 2007, the impacts of a single 3D seismic survey are two to three times as large as NMFS anticipated or more. The impacts of a single shallow hazard survey are comparable to the impacts NMFS anticipated from a single 2D or 3D seismic survey. Before authorizing further seismic surveying activity or shallow hazard surveys in the Arctic Ocean, NVPH requests NMFS to complete the PEIS that it began in 2006 to evaluate the potentially significant impacts of such activities.

Response: NMFS does not agree with NVPH's statement. First, the subject 2006 PEA was written by MMS, not NMFS. However, NMFS was a cooperating agency under NEPA in its preparation. Second, as noted in your cited part in the 2006 PEA, 20 km (12.4 mi) was used for illustrative purposes in an exercise to estimate impact of 4 seismic vessels operating within 24 km (15 mi) of each other. To do so, MMS created a box (that was moveable along the Beaufort or Chukchi Sea coast) to make these estimates. NMFS believes that the use of 20 km (12.4 mi) remains the best information available at this time and was the radius agreed to by participants at the 2001 Arctic Open-water Noise Peer Review Workshop in Seattle, Washington. This estimate is based on the results from the 1998 aerial survey (as supplemented by data from earlier years) as reported in Miller *et al.* (1999). In 1998, bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117 - 135 dB re 1 µPa rms, depending upon propagation. Although NVPH states that propagation actually measured in 2006 and 2007 showed that the impacts of a single 3D seismic survey are two to three times as large as NMFS anticipated, NVPH failed to provide any data to support this statement. In fact, the marine mammal monitoring reports on the 2006 and 2007 open water seismic surveys clearly showed that at 20 km (12.4 mi) the received levels from large airgun arrays used in 3D seismic surveys fall between 140 and 160 dB re 1 microPa (Ireland *et al.*, 2007a; 2007b; Patterson *et al.*, 2007; Funk *et al.*, 2007; 2008), which is below NMFS current noise exposure standard for Level B behavioral harassment. For this reason, until more data collection and analyses are conducted on impacts of anthropogenic noise (principally from seismic) on marine mammals in the Beaufort and Chukchi seas, NMFS will continue to use 20 km (12.4 mi) as the radius for estimating impacts on bowhead whales during the fall migration period.

Comment 48: NVPH states that the MMS 2006 PEA fails to provide site-specific analysis. Thus, in order to reduce the likelihood of significant impacts, NMFS has imposed 160 dB and 120 dB safety zones when authorizing surveys pursuant to the PEA. At a minimum, it must do the same for AES' surveys but with the modifications to the safety zones discussed above.

Response: NMFS does not agree with NVPH's statement. Although the MMS 2006 PEA did not explicitly provide site-specific analysis on the proposed AES shallow hazard and site clearance surveys, NMFS SEA prepared for the 2008 open-water season described its specific location and time of operation. As in the PEA, NMFS' 2008 SEA has described additional mitigation measures such as imposing the 160 dB safety zone for seismic activities in the Chukchi Sea when an aggregation of 12 or more bowhead or gray whales is sighted. This mitigation measure is required in the IHA issued to AES. Regarding imposing the 120–dB safety zone, it would pose safety and practical concerns for marine mammal monitoring in the Chukchi Sea. Therefore, a safety zone based on received level of 120 dB re 1 microPa will not imposed in the Chukchi Sea as it has been determined to be impracticable under the MMPA.

Comment 49: The NVPH and NSB state that the scope of the MMS 2006 PEA is explicitly limited to activities that occur during 2006, and that those seismic survey activities have already occurred, as well as an additional season worth of activities in 2007. NVPH states that the PEA does not evaluate activities that will occur over a period of several years, though NMFS has continued to rely on it as if its scope were for a multi-year program of seismic surveys. In addition, NVPH states that the PEA uses arbitrary significance criteria for non-endangered marine mammals that would allow long-lasting impacts to populations, or in fact the entire Arctic ecosystem, that would nonetheless be deemed insignificant. NVPH states that these significance criteria are inappropriate for an evaluation of impacts from seismic surveys, as indicated by MMS' use of more defensible significance criteria based on potential biological removal form marine mammal populations affected by seismic surveys in the Gulf of Mexico.

Response: NMFS does not agree with the NVPH and NSB's statement, as failed to provide any support for their position. The MMS 2006 PEA, in which NMFS was a cooperating agency, provided a thorough description and analysis on the affected environment, including ESA-listed and non-ESA-listed species. Under the NEPA, there is no ''significance criteria for non-endangered'' species. The criteria for determining whether a proposed action would result in significant effects to the environment are contained in CEQ's regulations. NVPH's statement that MMS' such analysis ''would allow long-lasting impacts to populations, or in fact the entire Arctic ecosystem, that would nonetheless be deemed insignificant'' in a way supports the MMS 2006 PEA. In addition, NMFS has prepared and released to the public an SEA for the proposed 2008 Arctic seismic surveys in the Chukchi and Beaufort Seas (see ADDRESSES for availability). This SEA incorporates by reference the relevant information contained in the 2006 PEA and updates that information where necessary to assess impacts on the marine environment from the 2008 seismic survey activities. Further, the SEA and FONSI considered the CEQ significance criteria (including the criteria developed by NMFS) to determine whether take of marine mammals incidental to AES' seismic survey would result in significant impacts to the human environment. NMFS believes that the agency has complied with the requirements of NEPA in its preparation of its NEPA documents.

Comment 50: Oceana and Ocean Conservancy are concerned that oil and gas activities may have substantial negative effects on marine mammals and other Arctic species. Oceana and Ocean Conservancy further state that there has never been a comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. Oceana and Ocean Conservancy request that in light of the dramatic effects of climate change in the Arctic, NMFS must not approve further seismic activities without such a comprehensive evaluation.

Response: NMFS shares Oceana and Ocean Conservancy's concern that the increasing industrial activities, including oil and gas development, could have profound negative effects on marine mammals in the Arctic region. Nevertheless, NMFS believes that proactive efforts to conserve and protect marine mammals and other Arctic species, such as NMFS' initiation of

status reviews of ice seals and the recent FWS' ESA-listing of polar bears, combined with prudent natural resources management and regulations on industrial activities by Federal Agencies would reduce these adverse impacts to biologically non-significant or negligible levels. In addition, monitoring and mitigation measures required for certain industrial activities would further reduce and minimize such negative effects to marine mammal species and stocks.. Long term research and monitoring results on ice seals in the Alaska's North Slope have shown that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors (Moulton *et al.*, 2005; Williams *et al.*, 2006).

NMFS does not agree with Ocean and Ocean Conservancy's statement that there has never been a comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. The MMS 2006 PEA, NMFS 2007 SEA, MMS 2007 draft PEIS, and NMFS 2008 SEA for the proposed issuance of five seismic survey and shallow hazard and site clearance survey activities for the 2008 open water season all provide comprehensive evaluation of the cumulative effects of seismic activities in the Arctic.

Comment 51: NSB and CBD are both concerned about cumulative impacts from multiple operations. AES' proposal is only one of numerous oil industry activities recently occurring, planned, or ongoing in the U.S. portions of the Chukchi and Beaufort Seas (e.g., proposed IHA for on-ice seismic surveys in Harrison Bay; proposed scientific seismic survey by the National Science Foundation (NSF); NMFS' 5–year regulations for activities related to Northstar; SOI IHA for Beaufort Sea exploratory drilling; CPAI IHA for Beaufort Sea; SOI IHA for Beaufort Sea; two proposed IHAs for Chukchi Sea and two proposed for the Beaufort Sea; and FWS 5–year regulations for oil and gas activities in the Beaufort Sea). No analysis of seismic surveys in the Russian or Canadian portions of the Chukchi and Beaufort seas is mentioned either. Similarly, significant increases in onshore oil and gas development with attendant direct impacts and indirect impacts on marine mammals such as through increased ship traffic are also occurring and projected to occur at greater rates than in the past. CBD states that further cumulative effects impacting the marine mammals of the Beaufort and Chukchi Seas are outlined in their NEPA comments on the MMS PEA and the DPEIS.

The NSB points out that in addition to the proposed offshore industrial operations listed above, there will be supply and fuel barging to villages, barging for support of onshore development and exploration, scientific cruises, climate change studies, USCG operations, tourist vessel traffic, and other activities as well. The cumulative impacts of all these activities must be factored into any negligible impact determination. Further, without an analysis of the effects of all of the planned operations, it is impossible to determine whether the monitoring plans are sufficient.

Response: Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. Cumulative impact assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the MMS Final PEA and NMFS SEA address cumulative impacts. The Final PEA's cumulative activities scenario and cumulative impact analysis focused on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that were likely and foreseeable. Other appropriate factors, such as Arctic warming, military activities, and noise contributions from community and commercial activities were also considered. Appendix D of the Final PEA addresses similar comments on cumulative impacts, including global warming. That information was incorporated into and updated in the NMFS 2008 SEA and into this document by citation. NMFS adopted the MMS Final PEA, and it is part of NMFS' Administrative Record. Finally, NMFS does not require authorizations under section 101(a)(5) of the MMPA for normal shipping or transit.

Comment 52: According to CBD, another factor causing NMFS' ''negligible impact'' findings to be suspect is the fact that the Chukchi Sea area is undergoing rapid change as a result of global warming. For species under NMFS' jurisdiction, and therefore subject to the proposed IHA, seals are likely to face the most severe consequences. The Arctic Climate Impact Assessment (ACIA) concluded that ringed, spotted, and bearded seals would all be severely negatively impacted by global warming this century. The ACIA stated that ringed seals are particularly vulnerable: ''Ringed seals are likely to be the most highly affected species of seal because all aspects of their lives are tied to sea ice'' (ACIA, 2004). In 2003, the NRC noted that oil and gas activities combined with global warming presented a serious cumulative impact to the species: ''Climate warming at predicted rates in the Beaufort Sea region is likely to have serious consequences for ringed seals and polar bears, and those effects will accumulate with the effects of oil and gas activities in the region.'' NMFS' failure to address global warming as a cumulative effect renders its negligible impact findings invalid.

Response: Under section 101(a)(5)(D) of the MMPA, ''the Secretary shall authorize... taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned (I) will have a negligible impact on such species or stock, and (II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.'' Section 101(a)(5)(D) of the MMPA does not require NMFS to base its negligible impact determination on the possibility of cumulative effects of other actions.

As stated in previous responses, cumulative impact assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the MMS 2006 Final PEA and NMFS' 2008 SEA address cumulative impacts. The PEA's cumulative activities scenario and cumulative impact analysis focused on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that were likely and foreseeable. Other appropriate factors, such as Arctic warming, military activities, and noise contributions from community and commercial activities were also considered. Appendix D of the PEA addresses similar comments on cumulative impacts, including global warming. That information was incorporated into and updated in the NMFS 2008 SEA and into this document by citation. NMFS adopted the MMS Final PEA, and it is part of NMFS' Administrative Record.

Endangered Species Act

Comment 53: The CBD states that the proposed IHA will affect, at a minimum, four endangered species, the bowhead, humpback and fin whales, and the polar bear. As a consequence, NMFS must engage in consultation under Section 7 of the ESA prior to issuing the IHA. Previous recent biological opinions for industrial activities in the Arctic (e.g., the 2006 Arctic Regional Biological

Opinion (ARBO)) have suffered from inadequate descriptions of the proposed action, inadequate descriptions of the status of the species, inadequate descriptions of the environmental baseline, inadequate descriptions of the effects of the action, inadequate analysis of cumulative effects, and inadequate descriptions and analysis of proposed mitigation. The CBD hopes NMFS performs the full analysis required by law and avoids these problems in its consultation for the proposed IHA.

Response: Response: Under section 7 of the ESA, NMFS has completed consultation with the MMS on the issuance of seismic permits for offshore oil and gas activities in the Beaufort and Chukchi seas. In a Biological Opinion issued on July 17, 2008, NMFS concluded that the issuance of seismic survey permits by MMS and the issuance of the associated IHAs for seismic surveys are not likely to jeopardize the continued existence of threatened or endangered species (specifically the bowhead, humpback, and fin whales) under the jurisdiction of NMFS or destroy or adversely modify any designated critical habitat. The 2008 Biological Opinion takes into consideration all oil and gas related activities that are reasonably likely to occur, including exploratory (but not production) oil drilling activities. In addition, NMFS has issued an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of bowhead, humpback, and fin whales. Regarding the polar bear, MMS has contacted the USFWS about conducting a section 7 consultation.

Comment 54: The CBD states that NMFS may authorize incidental take of the listed marine mammals under the ESA pursuant to Section 7(b)(4) of the ESA, but only where such take occurs while ''carrying out an otherwise lawful activity.'' To be ''lawful,'' such activities must ''meet all State and Federal legal requirements except for the prohibition against taking in section 9 of the ESA.'' The CBD states that AES' proposed activities violate the MMPA and NEPA and therefore are ''not otherwise lawful.'' The CBD concludes that any take authorization for listed marine mammals would, therefore, violate the ESA, as well as these other statutes.

Response: NMFS does not agree with the CBD statement. As noted in this document, NMFS has made the necessary determinations under the MMPA, the ESA, and NEPA regarding the incidental harassment of marine mammals by AES while it is conducting activities permitted legally under MMS' jurisdiction.

Other Comments

Comment 55: The CGWC states that gray whale population estimate was based on outdated data, and that there is no comprehensive assessment in the 2008 SAR. The CGWC points out that recent research by Professor Stephen Palumbi of Stanford University suggests the original gray whale population numbered approximately 118,000, nearly 5 times that of previous estimates.

Response: Although the population estimates of several marine mammal species or stocks used in this document may not be up to date, these are the best available scientific information NMFS considered. In terms of gray whale population estimate, NMFS still believes that using the mean of the 2000/01 and 2001/02 abundance estimates (not significantly different) of 18,813 is the best estimate. As long as the cited Palumbi research (Alter *et al.*, 2007) on historical gray whale population is concerned, it is irrelevant to the issuance of the IHA. Alter *et al.*'s (2007) research hypothesized that the decline of gray whale population from between 76,000 and 118,000 (average estimate at 96,000) occurred over the past 1,100 - 1,600 years, much before the western whaling began in the 19th century.

Description of Marine Mammals in the Activity Area

In general, the marine mammal species under NMFS' management authority that occur in or near the proposed survey area within the Chukchi Sea are the bowhead (*Balaena mysticetus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), minke (*B. acutorostrata*), beluga (*Delphinapterus leucas*), and killer whales (*Orcinus orca*); harbor porpoises (*Phocoena phocoena*); and the bearded (*Erignathus barbatus*), ringed (*Phoca hispida*), spotted (*P. largha*), and ribbon seals (*P. fasciata*). Among these species, the bowhead, humpback, and fin whales are listed as ''Endangered'' under the Endangered Species Act (ESA).

A detailed description of the biology, population estimates, and distribution and abundance of these species is provided in the AES' IHA application. Additional information regarding the stock assessments of these species is in NMFS Alaska Marine Mammal Stock Assessment Report (Angliss and Outlaw, 2007), and can also be assessed via the following URL link: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2006.pdf*. Additional information on those species that are under NMFS' management authority within or near the proposed survey areas is described in the FR Notice of Proposed IHA and is not repeated here.

Potential Effects on Marine Mammals

Operating a variety of acoustic equipment such as side-scan sonars, echo-sounders, bottom profiling systems, and airguns for seafloor imagery, bathymetry, and seismic profiling has the potential for adverse affects on marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and, at least in theory, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995)

The potential effects of airguns discussed below are presented without consideration of the mitigation measures that AES has presented and that will be required by NMFS. When these measures are taken into account, it is unlikely that this project would result in temporary, or especially, permanent hearing impairment or any significant non-auditory physical or physiological effects.

(1) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Studies have also shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (tolerance). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds, and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales.

(2) Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited,

although there are very few specific data of relevance. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico (Tyack *et al.*, 2003; Smultea *et al.*, 2004). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses. Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a; 2005b). Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

(3) Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement.

Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react briefly to an underwater sound by slightly changing its behavior or moving a small distance, the impacts of the change are unlikely to be biologically significant to the individual, let alone the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be significant.

(4) Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses. NMFS advises against exposing cetaceans and pinnipeds to impulsive sounds above 180 and 190 dB re 1 microPa (rms), respectively (NMFS, 2000). Those thresholds have been used in defining the safety (shut down) radii planned for the proposed seismic surveys. Although those thresholds were established before there were any data on the minimum received levels of sounds necessary to cause temporary auditory impairment in marine mammals, they are considered to be conservative.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (see Mitigation and Monitoring section below). In addition, many cetaceans are likely to show some avoidance of the area with high received levels of airgun sound. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is unlikely that any effects of these types would occur during the proposed project given the brief duration of exposure of any given mammal, and the planned monitoring and mitigation measures (see below).

(5) Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays.

Nonetheless, the airgun array proposed to be used in the proposed site clearance surveys in Chukchi Sea is small in volume (40 cu inches) and the source level is expected at 196 dB re 1 mircoPa (peak), which is approximately 190 dB re 1 microPa (rms). The 160, 170, and 180 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 32 m (104 ft), 10 m (33 ft), and 3.2 m (10 ft), respectively, for the 40–cu-inch airgun array, assuming spherical spreading.

Possible Effects of Bathymetry Echo Sounder Signals

Two types of bathymetry echo sounders are planned to be used for the proposed surveys. The Odom Hydrotrac Digital Echo Sounder is a single beam echo sounder that emits a single pulse of sound directly below the ship along the vessel trackline and provides a continuous recording of water depth along the survey track. The second sonar is a Reson Seabat 8101 Multibeam Echo Sounder, which consists of a transducer array that emits a swath of sound. The seafloor coverage swath of the multibeam sonar is water depth dependent, but is usually equal to two to four times the water depth. Nonetheless both echo sounders produce acoustic signals above 200 kHz which is below any marine mammal species' upper hearing threshold, therefore, NMFS does not believe that there will be any effects on marine mammals as a result from operating these sonars.

Possible Effects of Sub-bottom Profiler Signals

A high resolution subbottom profiler (GeoAcoustics GeoPulse sub-bottom profiling system or GeoAcoustics GeoChirp II sub-bottom profiling system) and an intermedia frequency seismic profiling system (''boomer'') are planned to be used for the proposed surveys.

The frequency range for these high resolution subbottom profilers are 3.5 to 5 kHz for the GeoPulse and 500 Hz to 13 kHz for the GeoChirp II. Either subbottom profiler has a source level at approximately 214 dB re 1 microPa-m (rms). The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 501 m (1,644 ft), 158 m (520 ft), 50 m (164 ft), and 16 m (52 ft), respectively, for either subbottom profiler, assuming spherical spreading.

The Applied Acoustics Model AA300 intermediate frequency seismic profiler (''boomer'') has a maximum energy input of 350 J per shot, though the maximum energy would be used in the surveys is 300 J. The pulse length ranges from 150 msec to 400 msec with a reverberation of less than 1/10 of the initial pulse. The peak in the source level beam reaches 218 dB re 1 microPa-m (or 209 dB re 1 microPa-m (rms)) at 300 J with a frequency range of 500 Hz to 300 kHz. The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 282 m (925 ft), 89 m (292 ft), 28 m (92 ft), and 9 m (29 ft), respectively, assuming spherical spreading.

The corresponding distances for an animal in the horizontal direction of these transducers would be much smaller due to the direct downward beam pattern of the subbottom profilers. Therefore, the horizontal received levels of 180 and 190 dB re 1 microPa (rms) would be within much smaller radii than 50 m (164 ft) and 16 m (52 ft) when using the GeoAcoustics subbottom profilers, which have the highest downward source level, respectively. In addition, the pulse duration of these subbottom profilers is extremely short, in the order of tens to hundreds of msec, and the survey is constantly moving. Therefore, for a marine mammal to receive prolonged exposure, the animal has to stay in a very small zone of ensonification and keep with the vessel's speed, which is very unlikely.

Possible Effects of Side-Scan Sonar Signals for Seafloor Imagery

One of the two types of side-scan sonars is planed to be used for the proposed shallow hazard and site clearance surveys for seafloor imagery. The EdgeTech 4200 dual-frequency side scan sonar operates at 120 kHz up to 410 kHz, with source level reaching 210 dB re 1 microPa-m (rms). The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 316 m (1,037 ft), 100 m (328 ft), 32 m (104 ft), and 10 m (33 ft), respectively, assuming spherical spreading.

The Klein System 3000 dual-frequency digital side-scan sonar emits pulses between 25 msec and 400 msec. The peak in the 132 kHz source level beam reaches 234 dB re 1 microPa-m (or 225 dB re 1 microPa-m (rms)). The peak in the 445 kHz source level beam reaches 242 dB re 1 microPa-m. The 445 kHz frequency band is outside any marine mammal species' hearing range, therefore, there would be no effect to marine mammals when this frequency is chosen. The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 1,778 m (5,834 ft), 562 m (1,844 ft), 178 m (583 ft), and 56 m (184 ft), respectively, assuming spherical spreading.

Nonetheless, these side scan sonars operate in an extremely high frequency range (over 120 kHz) relative to marine mammal hearing (Richardson *et al.*, 1995; Southall *et al.*, 2007). The frequency range from these side scan sonars is beyond the hearing range of mysticetes (baleen whales) and pinnipeds. Therefore, these sonars are not expected to affect bowhead, gray, humpback, fin, and minke whales and pinniped species in the proposed project area. The frequency range from these side scan sonars falls within the upper end of odontocete (toothed whale) hearing spectrum (Richardson *et al.*, 1995), which means that they are not perceived as loud acoustic signals with frequencies below 120 kHz by these animals. Therefore, these animals would not react to the sound in a biologically significant way. Further, in addition to spreading loss for acoustic propagation in the water column, high frequency acoustic energies are more quickly absorbed through the water column than sounds with lower frequencies (Urick, 1983). Therefore, NMFS believes that the potential effects from side scan sonar to marine mammals are negligible.

Numbers of Marine Mammals Estimated to be Taken

All anticipated takes would be takes by Level B harassment, involving temporary changes in behavior. The proposed mitigation measures to be applied would prevent the possibility of injurious takes.

The methods to estimate take by harassment and present estimates of the numbers of marine mammals that might be affected during the proposed seismic surveys in the Chukchi Sea are described below. The density estimates for cetaceans covered under this IHA area based on the estimates developed by LGL (2006) for the GXT IHA and used here for consistency. However, density estimates for these species were not separated by summer and fall. Rather, in a conservative approach, the higher of the two estimates was selected for use in the analysis. Density estimates on summering bowhead, gray, and beluga whales in the Beaufort and Chukchi seas are based on the data from Moore *et al.* (2000). Density estimates on ringed and bearded in the Chukchi Sea are based on Bengtson *et al.* (2005). Since the Bengtson *et al.* (2005) surveys were focused mainly on the coastal zone within 37 km (23 mi) of the shoreline, some adjustments were made to reflect the animals' density in offshore waters where the site clearance surveys are proposed. Ringed seals were relatively common in nearshore fast ice and pack ice, with lower densities in offshore pack ice; while bearded seals were generally more common in offshore pack ice, with the exception of high bearded seal numbers observed near the shore south of Kivalina. To make the adjustment, the average ringed seal density number (1.62 seals/km^2) for the year 2000 was used, while the raw density number (0.18 seal/km^2) for the offshore bearded seas was adopted. In addition, the seal density numbers represent the near-ice animal density, which are higher than open water densities where the site clearance surveys would be conducted. Therefore, the sale density numbers are overestimates because the survey method focused on animals on ice, not in water.

Specifically, the average estimates of ''take'' were calculated by multiplying the expected average animal densities by the area of ensonification for the 160 dB re 1 microPa (rms) isopleth for all marine mammals. The area of ensonification was determined by multiplying the total proposed trackline (760 km or 410 nm) times 2 (both sides of the trackline) times the distance to the 160–dB isopleth. The distance to the 160–dB isopleth was estimated as approximately 4,000 m (13,123 ft) with a corresponding area of ensonification of 6,080 km^2 (1,773 nm^2).

Based on the calculation, it is estimated that up to approximately 7 bowhead, 11 gray, and 21 beluga whales, 9,850 ringed and 1,094 bearded seals would be affected by Level B behavioral harassment as a result of the proposed shallow hazard and site clearance surveys. These take numbers represent 0.06, 0.06, and 0.6 percent of the western Arctic stock of bowhead, eastern North Pacific stock of gray, and eastern Chukchi stock of Beluga whales, respectively; and 3.96 and 0.438 percent of the Alaska stocks of ringed and bearded seal populations within the Chukchi Sea, respectively. These numbers are small relative to the respective species' stock size.

In addition, a numbers of humpback, fin, minke, and killer whales, harbor porpoises, and spotted and ribbon seals could also be affected by Level B behavioral harassment as a result of the proposed marine surveys in the Chukchi Sea. However, since the occurrence of these marine mammals is very rare within the proposed project area in the Chukchi Sea, take numbers cannot be estimated. Nonetheless, NMFS believes their take numbers would be much lower as compared to those marine mammals whose take numbers were calculated.

Potential Impacts to Subsistence Harvest of Marine Mammals

Subsistence hunting and fishing is historically, and continues to be, an essential aspect of Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting and fishing activities in and around the Chukchi Sea.

Alaska Natives, including the Inupiat, legally hunt several species of marine mammals. Communities that participate in subsistence activities potentially affected by seismic surveys within Lease Sale 193 are Point Hope, Point Lay,

Wainwright, and Barrow. Marine animals used for subsistence in the proposed area include: bowhead whales, beluga whales, ringed seals, spotted seals, bearded seals, Pacific walrus, and polar bears. Humpback whales are not typically found within the proposed project area of Lease Sale 193. However, during the summer of 2007, both humpback and fin whales were observed or detected as far as the Beaufort Sea (Joling, 2007). In each village, there are key subsistence species. Hunts for these animals occur during different seasons throughout the year. Depending upon the village's success of the hunt for a certain species, another species may become a priority in order to provide enough nourishment to sustain the village.

Point Hope residents subsistence hunt for bowhead and beluga whales, polar bears and walrus. Bowhead and beluga whales are hunted in the spring and early summer along the ice edge. Beluga whales may also be hunted later in the summer along the shore. Walrus are harvested in late spring and early summer, and polar bear are hunted from October to April (MMS, 2007). Seals are available from October through June, but are harvested primarily during the winter months, from November through March, due to the availability of other resources during the other periods of the year (MMS, 2007).

With Point Lay situated near Kasegaluk Lagoon, the community's main subsistence focus is on beluga whales. Seals are available year-round, and polar bears and walruses are normally hunted in the winter. Hunters typically travel to Barrow, Wainwright, or Point Hope to participate in bowhead whale harvest, but there is interest in reestablishing a local Point Lay harvest.

Wainwright residents subsist on both beluga and bowhead whales in the spring and early summer. During these two seasons the chances of landing a whale are higher than during other seasons. Seals are hunted by this community year-round and polar bears are hunted in the winter.

Barrow residents' main subsistence focus is concentrated on biannual bowhead whale hunts. They hunt these whales during the spring and fall. Other animals, such as seals, walruses, and polar bears are hunted outside of the whaling season, but they are not the primary source of the subsistence harvest (URS Corporation, 2005).

The seismic survey could affect subsistence uses particularly if bowhead or beluga whales are permanently deflected away from their migration path. In such a case, a permanent deflection could result in substantial impacts to Alaska Native communities who rely on these species for their subsistence harvest. However, mitigation measures will be put into place to minimize or avoid completely any adverse affects on all marine mammals. AES has proposed and NMFS will require that no seismic surveys would be conducted in areas where subsistence harvests would occur. Areas being used for subsistence hunting grounds would be avoided. Communication between the project vessels and land-based Com and Call Centers would provide additional insight to current subsistence activities to further ensure that there will be no negative impacts on subsistence activities.

As part of the application for the IHA, AES has developed a Plan of Cooperation (POC) with the Native communities. The POC specifies measures AES would take to minimize adverse effects on marine mammals where proposed activities may affect the availability of a species or stock of marine mammals for arctic subsistence uses or near a traditional subsistence hunting area. The POC has been distributed to the affected subsistence communities.

AES has conducted POC meetings for its seismic operations in the Chukchi Sea in Barrow, Wainwright, Point Lay, and Point Hope, and with the Alaska Eskimo Whaling Commission. Additional meetings will be held with the Alaska Ice Seal Committee, Alaska Beluga Committee, Eskimo Walrus Commission, and Alaska Nanuq Commission prior to operations. At these meetings, AES will present its program and discuss local concerns regarding subsistence activities.

Potential Impacts on Habitat

The proposed site clearance surveys would not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

Monitoring and Mitigation Measures

Monitoring

In order to further reduce and minimize the potential impacts to marine mammals from the proposed site clearance surveys, NMFS proposes the following monitoring and mitigation measures to be implemented for the proposed project in Chukchi Sea.

(1) Proposed Safety Zones

Based on a 214 dB re 1 microPa-m source sound for the GeoChirp II, the loudest acoustic equipment with sound in the sensitive hearing ranges of marine mammals, and a conservative acoustic modeling approach between spherical and cylindrical (i.e., ''15 Log R'') to estimate sound propagation loss, the calculated distance to the 180 dB isopleth is approximately 185 m (607 ft), and the distance to the 190 dB isopleth is about 40 m (131 ft). Because these values are based on calculation instead of field measurement during actual operations, NMFS proposes, as a precautionary measure, safety radii of 250 m (820 ft) for cetaceans and 75 m (246 ft) for pinnipeds.

In addition, a 160–dB vessel monitoring zone for bowhead and gray whales shall be established and monitored during all seismic surveys. Whenever an aggregation of 12 or more bowhead whales or gray whales are observed during a vessel monitoring program within the 160–dB safety zone around the seismic activity, the seismic operation will not commence, or will shut down, until two consecutive surveys indicate they are no longer present within the 160–dB safety zone of seismic-surveying operations. The radius of 160–dB isopleth based on modeling is 4,000 m (13,123 ft).

Before the commencement of the shallow hazard and site clearance survey, AES is required to conduct empirical measurements of acoustic sources to be used in the seismic survey and verify the radii of the modeled safety zones at 160, 170, 180, and 190 dB re 1 microPa (rms).

(2) Vessel-based Visual Monitoring

Marine mammal monitoring during the site clearance surveys would be conducted by qualified, NMFS-approved marine mammal observers (MMOs). Vessel-based MMOs would be on board the seismic source vessel to ensure that no marine mammals would enter the relevant safety radii of 180 and 190–dB isopleths while noise-generating equipment is operating.

For monitoring of the larger 160–dB safety zone, a chase vessel would be used for monitoring.

(3) Communication between Vessel and Shore

Communication of vessel operations and transit would occur in accordance with protocols set forth by the Com and Call Centers proposed to be operated in Barrow, Point Hope, and Point Lay. This would further enable vessel operators to be aware of marine mammals and subsistence activity in the area.

Mitigation

Proposed mitigation measures include (1) vessel speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) acoustic equipment shut down, and (3) acoustic source ramp up.

(1) Speed or Course Alteration

If a marine mammal is detected outside the relevant safety zone but appears likely to enter it based on relative movement of the vessel and the animal, then if safety and survey objectives allow, the vessel speed and/or course would be adjusted to minimize the likelihood of the animal entering the safety zone.

Shut down Procedures

If a marine mammal is detected within, or appears likely to enter, the relevant safety zone of the array in use, and if vessel course and/or speed changes are impractical or will not be effective to prevent the animal from entering the safety zone, then the acoustic sources that relate to the seismic surveys would be shut down.

Following a shut down, acoustic equipment would not be turned on until the marine mammal is outside the safety zone. The animal would be considered to have cleared the safety zone if it (1) is visually observed to have left the 250–m or 75–m safety zone, for a cetacean or a pinniped species, respectively; or (2) has not been seen within the relevant safety zone for 15 minutes in the case of odontocetes and pinnipeds, and for 30 minutes in the case of mysticetes. For the aggregation of bowhead or gray whales, the seismic equipment will not be turned on until the aggregation has left the 4,000–m safety zone or the animals forming the aggregation are reduced to fewer than 12 bowhead or gray whales.

Following a shut down and subsequent animal departure as above, the acoustic sources may be turned on to resume operations following ramp-up procedures described below.

(3) Ramp-up Procedures

A ramp-up procedure will be followed when the acoustic sources begin operating after a specified period without operations. It is proposed that, for the present survey, this period would be 30 min. Ramp up would begin with the power on of the smallest acoustic equipment for the survey at its lowest power output. The power output would be gradually turned up and other acoustic sources would be added in a way such that the source level would increase in steps not exceeding 6 dB per 5–min period. During ramp-up, the MMOs would monitor the safety zone, and if marine mammals are sighted, decisions about course/speed changes and/or shutdown would be implemented as though the acoustic equipment is operating at full power.

(4) Poor Visibility Conditions

AES plans to conduct 24–hr operations. The proposed provisions associated with operations at night or in periods of poor visibility include:

(1) During any nighttime operations, if the entire 180–dB safety radius is visible using vessel lights and/or night vision devices, then start of a ramp-up procedure after a complete shutdown of the airgun array may occur following a 30–min period of observation without sighting marine mammals in the safety zone.

(2) If during foggy conditions or darkness (which may be encountered starting in late August), the full 180–dB safety zone is not visible, the airguns cannot be ramped-up if the seismic source is in a full shutdown mode.

(3) If one or more airguns has been operational before nightfall or before the onset of foggy conditions, they can remain operational throughout the night or foggy conditions. In this case, ramp-up procedures can be initiated, even though the entire safety radius may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

Data Collection and Reporting

MMOs would record data to estimate the numbers of marine mammals present and to document apparent disturbance reactions or lack thereof. Data would be used to estimate numbers of animals potentially ''taken'' by harassment. They would also provide information needed to order a shut down of acoustic equipment when marine mammals are within or entering the safety zone.

When a sighting is made, the following information about the sighting would be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, and apparent reaction to the acoustic sources or vessel.

(2) Time, location relative to the acoustic sources, heading, speed, activity of the vessel (including whether and the level at which acoustic sources are operating), sea state, visibility, and sun glare.

The data listed under (2) would also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

A final report will be submitted to NMFS within 90 days after the end of the shallow hazard and site clearance surveys. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report also will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act

Under section 7 of the ESA, NMFS has completed consultation with the MMS on the issuance of seismic permits for offshore oil and gas activities in the Beaufort and Chukchi seas. In a Biological Opinion issued on July 17, 2008, NMFS concluded that the issuance of seismic survey permits by MMS and the issuance of the associated IHAs for seismic surveys are not likely to jeopardize the continued existence of threatened or endangered species (specifically the bowhead, humpback, and fin whales) under the jurisdiction of NMFS or destroy or adversely modify any designated critical habitat. The 2008 Biological Opinion takes into consideration all oil and gas related activities that are reasonably likely to occur, including exploratory (but not production) oil drilling activities. In addition, NMFS has issued an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of bowhead whales.

NEPA

In 2006, the MMS prepared Draft and Final PEAs for seismic surveys in the Beaufort and Chukchi Seas. NMFS was a cooperating agency in the preparation of the MMS PEA. On November 17, 2006 (71 FR 66912), NMFS and MMS announced that they were preparing a DPEIS in order to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf Lands Act to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort Seas off Alaska and NMFS' authorizations under the MMPA to incidentally harass marine

mammals while conducting those surveys.

On March 30, 2007 (72 FR 15135), the Environmental Protection Agency (EPA) noted the availability for comment of the NMFS/MMS DPEIS. Based upon several verbal and written requests to NMFS for additional time to review the DPEIS, EPA has twice announced an extension of the comment period until July 30, 2007 (72 FR 28044, May 18, 2007; 72 FR 38576, July 13, 2007). Because NMFS has been unable to complete the PEIS, it was determined that the 2006 PEA would need to be updated in order to meet NMFS' NEPA requirement. This approach was warranted as it was reviewing five proposed Arctic seismic survey IHAs for 2008, well within the scope of the PEA's eight consecutive seismic surveys. To update the 2006 Final PEA, NMFS prepared a SEA which incorporates by reference the 2006 Final PEA and other related documents.

Determination

Based on the preceding information, and provided that the mitigation and monitoring are incorporated, NMFS has determined that the impact of conducting the shallow hazard and site clearance surveys in Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the airguns, side-scan sonars, seismic profilers, and other acoustic equipment, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals. In addition, NMFS has determined that the AES' shallow hazard and site clearance survey would have no unmitigable adverse impact to the subsistence use of marine mammal species and/or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of site clearance operations, the number of potential harassment takings is estimated to be relatively small in light of the population or stock size. NMFS anticipates the actual take of individuals to be lower than the numbers presented in the analysis because those numbers do not reflect either the implementation of the mitigation measures or the fact that some animals will avoid the sound at levels lower than those expected to result in harassment.

In addition, no take by death and/or injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document. This determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the acoustic equipment, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) TTS is unlikely to occur, especially in odontocetes, until levels much above 180 dB re 1 microPa (rms) are reached; and (3) the fact that injurious levels of sound are only likely if an animal is very close to the vessel.

Authorization

As a result of these determinations, NMFS has issued an IHA to AES for conducting a shallow hazard and site clearance survey in the Chukchi Sea in 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 30, 2008.

James H. Lecky.

Director, Office of Protected Resources, National Marine Fisheries Service.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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1–199	(869–062–00132–1)	37.00	July 1, 2007
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300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
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260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
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790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
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156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
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3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
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49 Parts:			
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186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
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600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
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50 Parts:			
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17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.