9–30–08 Tuesday
Vol. 73 No. 190 Sept. 30, 2008

Pages 56703–56934

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 73 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 73, No. 190

Tuesday, September 30, 2008

Agriculture Department
See Farm Service Agency
See Forest Service
RULES
Revision of Delegation of Authority, 56705–56706

Army Department
NOTICES
Meetings:
Board of Visitors, United States Military Academy (USMA), 56809

Census Bureau
NOTICES
Meetings:
2010 Census Advisory Committee, 56791

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Children and Families Administration
NOTICES
Meetings:
National Commission on Children and Disasters, 56829–56830

Coast Guard
RULES
Transportation Worker Identification Credential Implementation in the Maritime Sector:
Hazardous Materials Endorsement for a Commercial Driver's License, 56730
PROPOSED RULES
Security Zones:
Coast Guard Base San Juan, San Juan Harbor, PR, 56773–56775
NOTICES
Environmental Assessment; Availability:
Proposed Modernization of the Coast Guard, 56857–56858

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
PROPOSED RULES
Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital:
Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 56756–56763

Defense Department
See Army Department
NOTICES
Meetings:
Defense Department Advisory Committee on Women in the Services (DACOWITS), 56805–56806
Defense Science Board; Advisory Committee, 56806
Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards, 56806
Privacy Act; Systems of Records, 56807–56809
Senior Executive Service Performance Review Board, 56809

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Paducah, 56809–56810
Ultra-Deepwater Advisory Committee, 56810
Unconventional Resources Technology Advisory Committee, 56810–56811

Environmental Protection Agency
PROPOSED RULES
State Hazardous Waste Management Program Revision:
Idaho, 56775–56779
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting and Recordkeeping Requirements for Enforcement Policy Regarding Sale and Use of Aftermarket Catalytic Converters, etc., 56817–56819
Pesticides:
Intent to Withdraw Draft PR Notice on Label Statements Regarding Third-Party Endorsements and Cause Marketing, 56819–56824

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act
Farm Credit Administration Board, 56824

Farm Service Agency
PROPOSED RULES
Maximum Interest Rates on Guaranteed Farm Loans, 56754–56756

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
328 Support Services GmbH Dornier Model 328 100 Airplanes, 56763–56765
Saab Model SAAB Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes, 56765–56767
NOTICES
Meetings:
Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 56887

Federal Communications Commission
RULES
Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau; Correction, 56741

Federal Deposit Insurance Corporation
RULES
Deposit Insurance Regulations; Revocable Trust Accounts, 56706–56712
PROPOSED RULES
Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital:
Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 56756–56763

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 56737–56738
Suspension of Community Eligibility, 56731–56737
PROPOSED RULES
Proposed Flood Elevation Determinations, 56779–56781
NOTICES
Disaster Declarations:
Arkansas, 56858
Louisiana, 56858–56859
New Hampshire, 56859

Federal Energy Regulatory Commission
NOTICES
Blanket Authorizations:
Texas Gas Transmission, LLC, 56811
Combined Notice of Filings, 56811–56813
Environmental Assessment; Intent: for the Proposed Kleen Energy Lateral Project
Kleen Energy Lateral Project; Algonquin Gas Transmission, LLC, 56813–56815
FERC Staff Attendance:
California Independent System; Operator Corp., 56815
Filings:
Constellation Energy Commodities Group, Inc., 56815–56816
Rumford Power Inc.; Tiverton Power Inc., 56816
U.S. Gas and Electric Inc., 56816
Western Area Power Administration, 56816–56817

Federal Housing Enterprise Oversight Office
RULES
Assessments, 56712–56715

Federal Housing Finance Board
RULES
Assessments, 56712–56715

Federal Housing Financing Agency
RULES
Assessments, 56712–56715

Federal Law Enforcement Training Center
NOTICES
Meetings:
State and Local Training Advisory Committee, 56859–56860

Federal Maritime Commission
NOTICES
Orders of Investigations and Hearings:
Possible Violations of 1984 Shipping Act, etc.; City of Los Angeles, CA et al., 56824–56827

Federal Motor Carrier Safety Administration
NOTICES
Meetings; Sunshine Act, 56887–56888

Federal Railroad Administration
NOTICES
Petition for Waiver of Compliance, 56888

Federal Reserve System
PROPOSED RULES
Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital:
Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 56756–56763
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 56827
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 56827

Federal Transit Administration
PROPOSED RULES
Bus Testing; Phase-In of Brake Performance and Emissions Testing, and Program Updates, 56781–56790
NOTICES
Capital Investment Program: Availability of Final Circular, 56888–56892
Grant Management Guidance, 56892–56896
Third Party Contracting Guidance; Final Circular, 56896–56918

Fish and Wildlife Service
NOTICES
Endangered and Threatened Wildlife and Plants:
Initiation of 5-Year Review; Request for Information on the Piping Plover (Charadrius Melodus), 56860–56862
Issuance of Permits, 56862–56863
Receipt of Applications for Permit, 56863–56864

Food and Drug Administration
NOTICES
Medical Device User Fee and Modernization Act:
Web Location of 2009 Proposed Guidance Development, 56830–56831
Meetings:
Antiviral Drugs Advisory Committee, 56831

Forest Service
NOTICES
Meetings:
Pacific Southwest Recreation Resource Advisory Committee, 56791

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 56827–56829

Health Resources and Services Administration
NOTICES
Meetings:
Advisory Committee on Organ Transplantation, 56832

Homeland Security Department
See Coast Guard

See Federal Emergency Management Agency
See Federal Law Enforcement Training Center
See U.S. Customs and Border Protection
RULES
Privacy Act; Implementation of Exemptions, 56922–56929
NOTICES
Privacy Act; Systems of Records, 56853–56857, 56930–56934

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office

Industry and Security Bureau
NOTICES
Meetings:
Materials Processing Equipment Technical Advisory Committee, 56791–56792
National Defense Stockpile Market Impact Committee; Request for Public Comments:
Potential Market Impact of Proposed Stockpile Disposals for Fiscal Year 2010, 56792–56793
Revisions to the Unverified List - Guidance as to ''Red Flags'' Under Supplement No. 3 to 15 C.F.R. Part 732, 56793–56795

Inspector General Office, Health and Human Services Department

NOTICES
OIG Supplemental Compliance Program Guidance for Nursing Facilities, 56832–56848

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 56795–56797

International Trade Commission
NOTICES
Investigations:
Hand-Held Meat Tenderizers, 56866–56867

Land Management Bureau
NOTICES
Meetings:
California Desert District Advisory Council, 56864–56865

Maritime Administration
RULES
Capital Construction Fund, 56738–56741

National Highway Traffic Safety Administration
RULES
List of Nonconforming Vehicles Eligible for Importation, 56741–56753

National Institute of Standards and Technology
NOTICES
Meetings:
Visiting Committee on Advanced Technology, 56797

National Institutes of Health
NOTICES
Government-Owned Inventions; Availability for Licensing, 56848–56850
Meetings:
National Cancer Institute, 56850–56851
National Institute of Child Health and Human Development, 56851–56852
National Institute of Diabetes and Digestive and Kidney Diseases, 56851
Prospective Grant of an Exclusive License:
Histone Deacetylase Inhibitors for the Prevention and Treatment of Central Nervous System Metastases of Extra-CNS Origin Cancers, 56852

National Oceanic and Atmospheric Administration
NOTICES
Availability of Grant Funds (for Fiscal Year 2009), 56797–56800
Incidental Takes of Marine Mammals to Specified Activities:
Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, FL, 56800–56804
Meetings:
General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission, 56804
Mid-Atlantic Fishery Management Council, 56804–56805

National Park Service
NOTICES
Meetings:
National Capital Memorial Advisory Commission, 56865

Nuclear Regulatory Commission
NOTICES
Application for a Combined License:
Exelon Nuclear Texas Holdings, LLC, 56867
Completion of Remediation at Salmon River Uranium Development Site, Near North Fork, ID, 56867–56868

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 56868

Postal Regulatory Commission
NOTICES
Global Expedited Package Service Contracts, 56868–56869

Presidential Documents
EXECUTIVE ORDERS
Government Agencies and Employees:
Spouses of Certain Members of the Armed Forces; Noncompetitive Appointments in the Civil Service, 56703–56704

Reclamation Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 56865–56866

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 56869
Self-Regulatory Organizations; Proposed Rule Changes:
American Stock Exchange LLC, 56869–56872

Financial Industry Regulatory Authority, Inc., 56872–56876
The NASDAQ Stock Market LLC, 56876–56878

Small Business Administration
NOTICES
Disaster Declarations:
Arkansas, 56878
Indiana, 56878

State Department
RULES
Visas:
Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 56729–56730
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Department of State Acquisition Regulation (DOSAR), 56878–56879
Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV-2010) Visa Program, 56879–56887

Thrift Supervision Office
PROPOSED RULES
Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital:
Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 56756–56763
NOTICES
Appointment of Receiver:
Ameribank; Northfork, WV, 56918

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Thrift Supervision Office
RULES
Haitian Hemispheric Opportunity Through Partnership Encouragement Acts (of 2006 and 2008), 56715–56729
PROPOSED RULES
Terrorism Risk Insurance Programs:
Cap on Annual Liability, 56767–56773
NOTICES
Meetings:
Open Meeting of the President's Advisory Council on Financial Literacy, 56918

U.S. Customs and Border Protection
RULES
Haitian Hemispheric Opportunity Through Partnership Encouragement Acts (of 2006 and 2008), 56715–56729

Veterans Affairs Department
NOTICES
Meetings:
Advisory Committee on Women Veterans, 56918–56919

Separate Parts In This Issue

Part II
Homeland Security Department, 56922–56934

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:
13473.....56703

6 CFR
5 (3 documents) 56922, 56924, 56927

7 CFR
2.....56705

Proposed Rules:
761.....56754
762.....56754

12 CFR
330.....56706
906.....56712
1206.....56712
1701.....56712

Proposed Rules:
3.....56756
208.....56756
225.....56756
325.....56756
567.....56756

14 CFR

Proposed Rules:
39 (2 documents) 56763, 56765

19 CFR
10.....56715
163.....56715
178.....56715

22 CFR
41.....56729

31 CFR

Proposed Rules:
50.....56767

33 CFR
105.....56730

Proposed Rules:
165.....56773

40 CFR

Proposed Rules:
271.....56775

44 CFR
64.....56731
65.....56737

Proposed Rules:
67.....56779

46 CFR
390.....56738

47 CFR
63.....56741

49 CFR
593.....56741

Proposed Rules:
665.....56781

Federal Register
Vol. 73, No. 190
Tuesday, September 30, 2008

Presidential Documents

Title 3—

The President

Executive Order 13473 of September 25, 2008

To Authorize Certain Noncompetitive Appointments in the Civil Service for Spouses of Certain Members of the Armed Forces

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the United States to provide for the appropriately expedited recruitment and selection of spouses of members of the Armed Forces for appointment to positions in the competitive service of the Federal civil service as part of the effort of the United States to recruit and retain in military service, skilled and experienced members of the Armed Forces and to recognize and honor the service of such members injured, disabled, or killed in connection with their service.

Sec. 2. *Definitions.* As used in this order:

(a) the term ''agency'' has the meaning specified for the term ''executive agency'' in section 105 of title 5, United States Code, but does not include the Government Accountability Office;

(b) the term ''Armed Forces'' has the meaning specified for that term in section 101 of title 10, United States Code;

(c) the term ''active duty'' means full-time duty in an armed force and includes full-time National Guard duty, except that, for Reserve Component members, the term ''active duty'' does not include training duties or attendance at service schools.

(d) the term ''permanent change of station'' means the assignment, detail, or transfer of a member of the Armed Forces serving at a present permanent duty station to a different permanent duty station under a competent authorization or order that does not:

(i) specify the duty as temporary;

(ii) provide for assignment, detail, or transfer, after that different permanent duty station, to a further different permanent duty station; or (iii) direct return to the present permanent duty station; and

(e) the term ''totally disabled retired or separated member'' means a member of the Armed Forces who:

(i) retired under chapter 61 of title 10, United States Code, with a disability rating at the time of retirement of 100 per cent; or (ii) retired or separated from the Armed Forces and has a disability rating of 100 percent from the Department of Veterans Affairs.

Sec. 3. *Noncompetitive Appointment Authority.* Consistent with the policy set forth in section 1 of this order and such regulations as the Director of the Office of Personnel Management may prescribe, the head of an agency may make a noncompetitive appointment to any position in the competitive service, for which the individual is qualified, of an individual who is:

(a) the spouse of a member of the Armed Forces who, as determined by the Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such spouse relocates to the member's new permanent duty station;

(b) the spouse of a totally disabled retired or separated member of the Armed Forces; or

(c) the unremarried widow or widower of a member of the Armed Forces killed while performing active duty.

Sec. 4. *Administrative Provisions.* The heads of agencies shall employ, as appropriate, appointment authority available to them, in addition to the authority granted by section 3 of this order, to carry out the policy set forth in section 1.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; and

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative functions.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
September 25, 2008

[FR Doc. E8–23125
Filed 9–29–08; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 73, No. 190
Tuesday, September 30, 2008

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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegation of Authority

AGENCY: Office of the Secretary, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This document delegates to the Assistant Secretary for Administration the authority vested in the Secretary of Agriculture under the National Agriculture Research, Extension, and Teaching Policy Act of 1977 to enter into cooperative agreements and under the Farm Security and Rural Investment Act of 2002 to implement programs for the Federal procurement and voluntary labeling of biobased products. It also rescinds the delegation of authority to the Chief Economist to implement the biobased procurement and voluntary labeling programs.

DATES: These interim regulations are effective September 30, 2008. Comments are invited and should be received by October 30, 2008.

ADDRESSES: USDA, Departmental Administration, Room 209–A Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–0103.

FOR FURTHER INFORMATION CONTACT: Mrs. Shana Love, Departmental Administration, Room 209–A Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–0103; telephone: (202) 205–4008; fax: (202) 720–2191; e-mail: *biopreferred@usda.gov.* Information regarding the BioPreferred Program is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171 established a program for the procurement of biobased products by Federal agencies and a voluntary program for labeling of biobased products. The Food, Conservation, and Energy Act of 2008, Public Law 110–246 continues the biobased markets program and adds provisions related to the program. USDA refers to the program for the Federal procurement of biobased products and the voluntary program for labeling of biobased products, collectively, as the BioPreferred Program (Program).

In an effort to make sure the Program continues to move forward and build demand for biobased products within the Federal government and commercially, management of the Program has been transferred from Office of the Chief Economist to Departmental Administration to enhance and strengthen the Program, as well as increase resources for research and analyses of emerging global energy issues and the necessary economic analysis of biobased products (that is, market identification, comparative costs with fossil energy derived product alternatives, and supply and demand estimations).

Section 1472 of the National Agriculture Research, Extension and Teaching Policy Act of 1977, Public Law 99–113 (7 U.S.C. 3318), grants the Secretary of Agriculture the authority to enter into cooperative agreements with Federal and State agencies and private organizations, to further research, extension, or teaching programs in the food and agricultural sciences of USDA. Because this authority does not extend to the Assistant Secretary for Administration, a delegation of the Secretary's authority is necessary. This document sets forth that delegation, as well as delegations to the Assistant Secretary for Administration relating to the biobased procurement and labeling programs included in the Farm Security and Rural Investment Act of 2002.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12988 and Executive Order 12866, amended by Executive Order 13258. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), and thus, is exempt from the provisions of that Act. Finally, this action is not a rule as defined in the Small Business Regulatory Fairness Enforcement Act, (5 U.S.C. 801 *et seq.*), and thus does not require review by Congress.

List of Subjects in 7 CFR Part 2

Authority delegations (government agencies).

■ Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 7 U.S.C. 6912(a)(1), 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 2. Amend § 2.24 to add new paragraphs (a)(7)(i)(J) and (a)(7)(i)(K), to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(7) * * *

(i) * * *

(J) Implementation of a program for the Federal procurement of biobased products in consultation with the Administrators of the Environmental Protection Agency and General Services Administration and the Director, National Institute of Standards and Technology; and establishment, in consultation with the Administrator of the Environmental Protection Agency, of a voluntary ''USDA Certified Biobased Product'' labeling program (7 U.S.C. 8102).

(K) Entering into cooperative agreements to further research programs in the food and agricultural sciences, related to establishing and implementing Federal biobased procurement and voluntary biobased labeling programs (7 U.S.C. 3318).

* * * * *

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.29 [Amended]

■ 3. Amend § 2.29 as follows:
■ a. Remove paragraph (a)(11)(vii),
■ b. Redesignate paragraphs (a)(11)(viii) through (a)(11)(ix) as paragraphs (a)(11)(vii) through (a)(11)(xiii).

Dated: September 24, 2008.

Edward T. Schafer,

Secretary of Agriculture.

[FR Doc. E8–22959 Filed 9–29–08; 8:45 am]

BILLING CODE 3410–93–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD33

Deposit Insurance Regulations; Revocable Trust Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is adopting an interim rule to simplify and modernize its deposit insurance rules for revocable trust accounts. The FDIC's main goal in implementing these revisions is to make the rules easier to understand and apply, without decreasing coverage currently available for revocable trust account owners. The FDIC believes that the interim rule will result in faster deposit insurance determinations after depository institution closings and will help improve public confidence in the banking system. The interim rule eliminates the concept of qualifying beneficiaries. Also, for account owners with revocable trust accounts totaling no more than $500,000, coverage will be determined without regard to the beneficial interest of each beneficiary in the trust.

Under the new rules, a trust account owner with up to five different beneficiaries named in all his or her revocable trust accounts at one FDIC-insured institution will be insured up to $100,000 per beneficiary. Revocable trust account owners with more than $500,000 and more than five different beneficiaries named in the trust(s) will be insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary.

DATES: The effective date of the interim rule is September 26, 2008. Written comments must be received by the FDIC not later than December 1, 2008.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Revocable Trust Accounts'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, Legal Division (202) 898–7349; Christopher Hencke, Counsel, Legal Division (202) 898–8839; James V. Deveney, Section Chief, Deposit Insurance Section, Division of Supervision and Compliance (202) 898–6687; or Kathleen G. Nagle, Associate Director, Division of Supervision and Consumer Protection (202) 898–6541, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

One of the FDIC's fundamental goals is to ensure that depositors and insured depository institution employees understand the FDIC's deposit insurance rules. That goal is essential in carrying out the FDIC's combined mission of helping to maintain public confidence and stability in the United States banking system and protecting insured depositors.

Despite the FDIC's efforts to simplify deposit insurance rules in recent years, there is still significant public and industry confusion about the insurance coverage of revocable trust accounts—particularly living trust accounts, one of the two types of revocable trust accounts. This continuing confusion about the insurance coverage of revocable trust accounts is evidenced by the tens of thousands of deposit insurance inquiries the FDIC has received following recent depository institution failures.

Current Rules for Revocable Trust Accounts

There are two types of revocable trust accounts insured under the FDIC's coverage rules: Informal trust accounts and formal trust accounts. Informal trust accounts are comprised simply of a signature card on which the owner designates the beneficiaries to whom the funds in the account will pass upon the owner's death. These are the most common type of revocable trust accounts and generally are referred to as ''payable-on-death'' (''POD'') accounts or in-trust-for (''ITF'') accounts or *Totten Trust* accounts. For purposes of this rulemaking, we will refer to all informal trust accounts as POD accounts.

The other type of revocable trust accounts are accounts established in connection with formal revocable trusts. Formal revocable trusts are trusts created for estate planning purposes. They are often referred to as: living trusts, family trusts, marital trusts, survivor's trusts, by-pass trusts, generation-skipping trusts, AB trusts or special needs trusts. For purposes of this rulemaking, we will refer to all formal revocable trusts as living trusts. Like an informal revocable trust, a living trust is a trust created by an owner (also known as a grantor or settlor) over which the owner retains control during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable. A living trust is an increasingly popular estate planning tool. Like a POD account, a deposit account held in connection with a living trust account at an FDIC-insured institution is insured under the FDIC's coverage rules for revocable trust accounts.

The FDIC's rules provide that all revocable trust accounts (both POD accounts and living trust accounts) are insured up to $100,000 per ''qualifying beneficiary'' designated by the owner of the account.[1] If there are multiple owners of a revocable trust account, coverage is available separately for each owner, per qualifying beneficiary as to each owner. Qualifying beneficiaries are defined as the owner's spouse, children, grandchildren, parents and siblings.[2]

The per-qualifying beneficiary coverage available on revocable trust accounts is separate from the insurance coverage afforded to depositors in

[1] 12 CFR 330.10.

[2] *Id.* at 330.10(a).

connection with other accounts they own in other ownership capacities at the same insured institution. That means, for example, if an individual has at the same insured depository institution a single-ownership account with a balance of $100,000 and a POD account (naming at least one qualifying beneficiary) with a balance of $100,000, both accounts would be insured separately for a combined coverage amount of $200,000.

Under our current rules, separate, per-beneficiary insurance coverage is available for revocable trust accounts only if the account satisfies certain requirements. First, the title of the account must include a term such as POD or ITF or family trust (or similar expression or acronym), evidencing an intent that the funds shall belong to the designated beneficiaries upon the owner's death. Second, as explained above, each beneficiary must be a qualifying beneficiary. And third, for POD accounts, the beneficiaries must be specifically named in the deposit account records of the depository institution. Under the current rules, the beneficiaries of a living trust need not be indicated in the institution's records.[3]

If a revocable trust account owner names one or more non-qualifying beneficiaries in the account (or trust), the funds corresponding to those non-qualifying beneficiaries are considered the single-ownership funds of the depositor and insured under that category of coverage. For example, assume a depositor owns a POD account (and no other accounts at the same institution) naming his spouse and a friend as beneficiaries. The account has a balance of $200,000. The coverage would be $100,000 under the revocable trust coverage rules because he has named one qualifying beneficiary, and $100,000 would be insured under the single-ownership coverage rules because the funds attributable to the non-qualifying beneficiary (the friend) would be considered the owner's single-ownership funds and thus insured under that category of ownership. If the account owner in this example also has a single-ownership account with a balance of, say, $50,000, then the $100,000 (attributable to the non-qualifying beneficiary) from his POD account would be added to the funds held in the single-ownership account and be insured to a limit of $100,000. Thus, $50,000 would be uninsured.

As explained above, both POD accounts and living trust accounts are types of revocable trust accounts insured under the revocable trust account category in the FDIC's coverage rules. Consequently, all funds that a depositor holds in both living trust accounts and POD accounts naming the same beneficiaries are aggregated for insurance purposes and insured to the applicable coverage limits. For example, assume a depositor has a living trust account for $200,000 in connection with a living trust naming his children, A and B. If the depositor also has a $200,000 POD account naming A and B, the combined coverage on the two accounts would be $200,000—not $200,000 per account.

Prior Guidance on and Revisions to the Revocable Trust Account Coverage Rules

Prior to the late 1980s, when living trusts began to emerge, the coverage rules for revocable trust accounts were easy to understand and apply. Revocable trusts were almost exclusively in the form of POD accounts, and the coverage was determined based on the number of qualifying beneficiaries named on the signature card used to establish the account. In fact, the opening of the POD account (solely through the completion of the signature card) resulted in the formation of the trust.

In 1994, as living trusts became increasingly popular, the FDIC published guidelines on the insurance coverage of living trust accounts.[4] The guidelines addressed how the FDIC would insure living trust accounts amid the complicating factor that many living trusts contained clauses tying a beneficiary's entitlement to the trust assets to the satisfaction of specified conditions, known as defeating contingencies. Despite the issuance of these guidelines, bankers and depositors continued to be confused and uncertain about the insurance coverage of living trust accounts. This confusion and uncertainty was understandable, given the complex legal theory and analysis needed to determine the coverage of living trust accounts involving defeating contingencies. In 2004, the FDIC simplified the rules for living trust accounts by amending the regulations to provide coverage for the owners of living trust accounts, irrespective of defeating contingencies in the trust. The FDIC's objectives behind this rulemaking were to simplify the existing rules and to provide coverage for living trust accounts similar to POD account coverage.[5]

Despite the FDIC's past efforts to simplify and clarify the coverage rules for living trust accounts, confusion and uncertainty continue to exist among bankers and depositors. One reason for this situation is that living trusts are becoming increasingly complex. A typical living trust is a trust with two grantors, husband and wife, who have full access to the trust assets during their lifetimes, with the trust providing for a life estate interest for the surviving spouse upon the death of the first spouse and then providing for a ''family trust'' (in the form of an irrevocable trust) for designated family members upon the death of the second spouse. It is also common for living trusts to provide for lump-sum payments to designated beneficiaries. The FDIC's coverage rules for living trust accounts, as the result of the 2004 revisions, in theory are fairly straightforward, but applying them to complex living trusts has resulted in significant continuing confusion and uncertainty among bankers and depositors. Also, upon an institution failure, because of the complexities of living trusts, FDIC determinations on the coverage available to owners of living trust accounts are often time consuming; thus, depositors are sometimes delayed in receiving their insured funds.

II. The Interim Rule

Overview

The FDIC's goals in this rulemaking are twofold. One is to make the coverage rules for revocable trust accounts easy to understand and easy to apply (in determining the applicable coverage amount), without decreasing coverage currently available for revocable trust account owners. The other is to retain reasonable limitations on coverage levels for revocable trust account owners. Under the new rules, a trust account owner with up to $500,000 in revocable trust accounts at one FDIC-insured institution is insured up to $100,000[6] per beneficiary. (This is the rule that will apply to the vast majority of revocable trust account owners.) Revocable trust account owners with more than $500,000 and more than five different beneficiaries named in the trust(s) are insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the

[3] *Id.* at 330.10(a) & (b).

[4] FDIC Advisory Opinion 94–32 (May 14, 1994).

[5] 69 FR 2825, 2827 (Jan. 21, 2004).

[6] Technically, as reflected in the regulatory text, this limitation is the Standard Maximum Deposit Insurance Amount (''SMDIA''), currently $100,000. Thus, the coverage would automatically reflect any future inflation adjustments to the SMDIA consistent with section 11(a)(1)(F) of the FDI Act, 12 U.S.C. 1821(a)(1)(F). For ease of reference, throughout this notice we will use $100,000 as the basic coverage amount.

trust(s), limited to $100,000 per beneficiary.

Under the interim rule, coverage is based on the existence of any beneficiary named in the revocable trust, as long as the beneficiary is a natural person, or a charity or other non-profit organization.[7] As discussed below, under the interim rule the concept of ''qualifying beneficiaries'' is eliminated. For an account owner with combined revocable trust account balances of $500,000[8] or less, the maximum available coverage would be determined simply by multiplying the number of beneficiaries by $100,000.

A living trust account with a balance of $400,000, for example, would be insured for up to $400,000 as long as there are at least four beneficiaries named in the trust.[9] Different proportional ownership interests of the beneficiaries in the trust assets would not affect the deposit insurance coverage. So, in this example, the maximum coverage would be $400,000 even if the trust provided that beneficiaries A and B are entitled to twenty percent each of the trust assets and beneficiaries C and D are entitled to thirty percent each of the trust assets. As under the current rules, however, a depositor would receive a combined maximum coverage amount of $100,000 for the same beneficiary named in more than one revocable trust account he or she owns at one insured institution.[10]

Eliminating the Concept of ''Qualifying Beneficiaries''

As explained above, currently revocable trust account coverage is based, in large part, on the number of qualifying beneficiaries named in the trust. Qualifying beneficiaries are defined as the revocable trust account owner's spouse, children, grandchildren, parents and siblings.[11] Prior to 1999, the definition included only the owner's spouse, children and grandchildren. The FDIC's rationale in 1999 for expanding the definition of qualifying beneficiaries to include the account owner's parents and siblings was to recognize other family members likely to be named in a person's revocable trust. The objective was to prevent depositors from losing money in an institution failure because of their misunderstanding of the coverage rules for revocable trust accounts.[12]

Before and since the 1999 expansion of the definition of *qualifying beneficiaries,* depositors, consumer groups and bankers have questioned the fairness of limiting the coverage on revocable trust accounts to the naming of certain beneficiaries. Many have argued that the FDIC should expand the definition of qualifying beneficiaries to include, among others, an account holder's nieces and nephew, in-laws, great-grandchildren, cousins, friends and charities. Historically, the FDIC's response to such complaints has been that there must be a reasonable limitation of the amount of coverage available on revocable trust accounts; otherwise, there would be potentially unlimited coverage under this account category. Hence, the FDIC has been reluctant to amend the rules to provide coverage based on any beneficiary(ies) named in a revocable trust. Under the interim rule, however, the FDIC believes that it can achieve greater fairness under the revocable trust rules by basing coverage on the naming of any beneficiary in a revocable trust, but concurrently imposing coverage qualifications (discussed below) on accounts over $500,000.

In addition to addressing the fairness issue, eliminating the concept of ''qualifying beneficiaries'' makes the coverage rules easier to understand. Depositors and bankers no longer need to know who is a qualifying beneficiary and who is not. Also, this revision will obviate the need for FDIC claims agents, upon an institution's failure, to confirm that a beneficiary named in a revocable trust account is a qualifying beneficiary. Thus, under the interim rule, the FDIC anticipates being able to make quicker deposit insurance determinations on revocable trust accounts at institution failures.

For Accounts With Aggregate Balances of $500,000 or Less, Determining Coverage Without the Necessity of Discerning Each Beneficiary's Interest in the Trust(s)

One of the most confusing and complex aspects of determining revocable trust account coverage under the current rules is having to discern and consider unequal beneficial interests in revocable trusts. This issue typically arises in the context of a living trust that, for example, provides either varying lump-sum payments for designated beneficiaries or different percentage interests in trust assets to certain beneficiaries, or different remainder interests in the assets to the same or other beneficiaries. The method for determining coverage in some situations involving unequal beneficial interests necessitates the formulation and solving of simultaneous equations. Consumers and bankers alike find applying the current revocable trust account rules to complicated living trusts, especially ones involving unequal beneficial interests, far too complex. The FDIC agrees. Therefore, a key component of the interim rule is the ability to determine coverage available to account owners without regard to unequal interests of the beneficiaries named in the revocable trust(s). The FDIC believes this rule change, coupled with the recognition of all beneficiaries, will make the revocable trust account rules simpler and more transparent.

Retaining Current Coverage Levels for Account Owners With More Than $500,000 in Revocable Trust Accounts and More Than Five Beneficiaries Named in the Trusts(s)

Based on our experience at recent institution failures, the FDIC believes that the vast majority of revocable trust account owners have less than $500,000 in revocable trust accounts at one FDIC-insured institution. Thus, under the interim rule coverage for an account owner's revocable trust accounts will be determined simply by multiplying the number of different beneficiaries named in the trust(s) by $100,000.

In order to retain reasonable limits on the maximum coverage available to revocable trust account owners and also to retain the coverage available to revocable trust account owners under the current coverage rules, the interim rule provides special treatment for depositors with revocable trust accounts over $500,000 naming more than five beneficiaries. Under the interim rule, revocable trust account owners with more than $500,000 and more than five beneficiaries named in the trusts are insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trusts(s), limited to $100,000 per beneficiary. This coverage is no less than the coverage afforded to such account owners under the current rules, particularly because under the interim rule the coverage is based on the number of beneficiaries, not the number of qualifying beneficiaries. Also, as discussed below, under the interim rule life-estate interest holders are deemed to

[7] If in establishing a POD account, the owner names a living trust as the beneficiary, we will consider the beneficiaries of the trust to be the beneficiaries of the POD account.

[8] Technically, this amount is fives times the SMDIA.

[9] This assumes the account owner has no other revocable trust accounts at the same depository institution.

[10] For example, if a depositor has a POD account naming her son as a beneficiary and a living trust account at the same bank naming the same son as a beneficiary, the depositor would be entitled to no more than $100,000 with respect to having named her son a beneficiary of her revocable trust accounts.

[11] 12 CFR 330.10(a).

[12] 64 FR 15657 (Apr. 1, 1999).

have a $100,000 interest in the trust assets.

For example, assume an individual has a living trust account. The living trust provides a life estate interest for that individual's spouse, $15,000 for his college, $5,000 for each of three brothers and the remaining amount to his friend. The balance in the account is $600,000. Here the account balance exceeds $500,000 and the number of beneficiaries is more than five. Hence, under the interim rule, the maximum coverage would be the greater of either: $500,000 or the aggregate beneficial interests of all the beneficiaries (up to a limit of $100,000 per beneficiary). The beneficial interests are: $100,000 for the spouse's life estate interest, $15,000 for the college, $5,000 for each brother (totaling $15,000), and $100,000 for the friend (because of the per-beneficiary limitation of $100,000). The total beneficial interests, thus, would be $230,000. Hence, the maximum coverage afforded to the account owner would be $500,000, the greater of $500,000 or $230,000.

The FDIC believes that basing the coverage of trust accounts over $500,000 (with more than five different beneficiaries in the trust(s)) on the ownership interest of each beneficiary named in the applicable trust(s) would prevent the potential of providing unlimited coverage with respect to revocable trust accounts. Without such a limitation, an account owner could name a limitless number of beneficiaries each with a nominal interest in the trust and obtain coverage up to $100,000 for naming each such beneficiary. For example, a revocable trust account held in connection with a trust entitling one beneficiary to $1 million and entitling each of nine other beneficiaries to $1 would be insured for $1 million, without the limitation imposed under the interim rule.

Treatment of Life-Estate Interests

Another complicating factor in determining the coverage for living trust accounts is determining the value of life estate interests. A life estate interest usually means the life-estate beneficiary is entitled to the income on the trust assets during his or her lifetime. A large percentage of living trusts provide a life estate interest for one or more beneficiaries. The most typical situation is where a married person creates a trust providing a life estate interest for his or her surviving spouse and a remainder interest for their children. The FDIC's current rules provide that, in such situations, each life-estate holder and each remainder-man (also known as residuary beneficiaries) is deemed to have an equal interest in the trust assets for deposit insurance purposes.[13] This rule has proven difficult to apply, especially where the living trust provides for lump-sum gifts for certain beneficiaries, life estate interests for others and different percentage interests for the remainder-men, who may be the same as or different from the other beneficiaries. In order to simplify the coverage rules, the interim rule revises the current valuation method for life estate interests by deeming each such interest to be $100,000, for purposes of determining deposit insurance coverage. The example above (involving a trust providing for a spousal life estate interest and bequests to the owner's college, brothers and friend) demonstrates how the interim rule would apply to a living trust providing for a life-estate interest.

Treatment of Irrevocable Trusts Springing From a Revocable Trust

Another current complexity in determining coverage for living trust accounts is that, when it is created, a living trust is a revocable trust but, when the owner dies, the trust becomes irrevocable.[14] At that stage in the lifecycle of the living trust, the funds corresponding to the irrevocable trust are insured under the FDIC's rules for irrevocable trust accounts.[15] Under those rules, coverage is based on the non-contingent interest of each beneficiary named in the trust. In effect, when a living trust evolves from a revocable trust to an irrevocable trust the insurance coverage available on the account is based on a different set of rules—the irrevocable trust account rules. As such, the coverage on the account often decreases from what it had been when the trust was insured solely under the revocable trust rules.

To eliminate this complexity and the confusion it generates, under the interim rule, the rules for determining the coverage of the living trust account will remain the same when the trust (or part of the trust) converts to an irrevocable trust. For example, a grantor has a living trust account held in connection with a trust naming three beneficiaries, each of whom receives a specified share of the trust assets if he or she graduates from college by age 25. Under the current insurance rules, when the grantor is alive (meaning that the trust is still a revocable trust) the maximum coverage on the account is $300,000—1 grantor times 3 beneficiaries times $100,000. Also under the current rules, upon the grantor's death (allowing for the six-month grace period during which coverage would remain the same), the coverage reduces to $100,000 (if none of the beneficiaries has graduated from college yet) because of the contingent nature of the beneficial interests provided for in the trust. Under the interim rule, contingencies would continue to be irrelevant for coverage purposes after the grantor's death, even though the trust has evolved into an irrevocable trust. In this example, under the interim rule the coverage would still be up to $300,000.

The FDIC believes that the continuity of coverage provided for under this component of the interim rule would greatly simplify the current rules for determining coverage for living trust accounts. It is important to note, however, that under the interim rule the coverage on a living trust account could still change during the lifecycle of the trust. For example, when both grantors in a co-grantor trust are alive, the maximum coverage on the account would be $1,000,000, because the formula for determining coverage would be: 2 (grantors) times 5 beneficiaries times $100,000.[16] If one of the grantors dies, then the maximum coverage would be 1 (grantor) times 5 beneficiaries times $100,000.[17] Coverage would likewise decrease if one or more of the beneficiaries named in the revocable trust died, assuming the death of the beneficiary(ies) would cause the total number of beneficiaries to drop below five.

Impact of Proposed Rules on the Deposit Insurance Fund Reserve Ratio

Eliminating the concept of qualifying beneficiaries and disregarding unequal interests in a trust (for accounts with five or fewer beneficiaries) theoretically will increase coverage immediately. Since no industry-wide data are maintained on trust accounts, a definite determination of the extent of this effect on insurance coverage for existing accounts is difficult. Thus, the precise effect the proposal will immediately have on the Deposit Insurance Fund (''DIF'') reserve ratio can be estimated,

[13] 12 CFR 330.10(f)(3).

[14] For jointly owned living trusts, upon the death of one of the owners, typically part of the trust remains revocable and part becomes irrevocable.

[15] 12 CRR 330.13.

[16] This assumes neither grantor has any other revocable trust accounts at the same insured institution.

[17] Of course, the FDIC rules provide for a six-month grace period after the death of an account owner during which the coverage would be the same as if the owner (grantor) were still alive. 12 CFR 330.3(j).

as discussed below, but cannot be determined with precision.[18]

In fifteen failures from 1999 to 2003 and three failures from the past year for which final insurance determinations have been made, approximately ninety-seven percent of the funds in revocable trust accounts were insured on average and approximately twenty-five percent of domestic deposits were in revocable trust accounts on average. If conclusions from these eighteen failed institutions can be generalized to the banking industry as a whole, then, even if all current revocable trust deposits were to become insured, the effect on total insured deposits and on the DIF reserve ratio would be small. Recognizing that this data does not provide a strong statistical basis for drawing conclusions, we welcome comments on the effect of the interim rule on the level of insured deposits.

In the long-term, eliminating the concept of qualifying beneficiaries could bring more insured deposits into the system. For example, since, under the interim rule, nieces and nephews are eligible beneficiaries, a depositor might add her niece and nephew to a trust account that previously had only a sister as the sole beneficiary. Anticipating future moves by depositors is even more difficult than estimating the immediate effect on deposit insurance coverage. Thus, the long-term effect of the interim rule on insured deposits and on the reserve ratio is even more uncertain, beyond the conclusion that over time the change can be expected to lower the reserve ratio to some (likely limited) degree.

Effective Date of the Interim Rule

The interim rule is effective on September 26, 2008, the date on which the FDIC Board of Directors approved the interim rule. It is also the date this interim rule was filed for public inspection with the Office of the Federal Register. In this regard, the FDIC invokes the good cause exception to the requirements in the Administrative Procedure Act[19] (''APA'') that, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of thirty days from the publication date. The FDIC believes good cause exists for making the interim rule effective immediately because, based on recent depository institution failures, it is evident that many depositors and depository institution employees misunderstand the insurance rules for revocable trust accounts. The interim rule simplifies and modernizes the coverage rules for revocable trust accounts and, hence, will provide greater certainty to depositors and depository institution employees about the extent to which revocable trust accounts are insured.

Importantly, under the interim rule, no depositor will be insured for an amount less than he or she would have been entitled to under the current revocable trust account rules. Some depositors will be entitled to greater coverage under the interim rule than under the current rules, especially because under the interim rule a beneficiary need no longer be a qualifying beneficiary for the account owner to be insured on a per-beneficiary basis. Moreover, the FDIC believes that the interim rule will result in faster deposit insurance determinations after depository institution closings and will help improve public confidence in the banking system.

For these reasons, the FDIC has determined that the public notice and participation that ordinarily are required by the APA before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the FDIC desires to have the benefit of public comment before adopting a permanent final rule and thus invites interested parties to submit comments during a 60-day comment period. In adopting the final regulation, the FDIC will revise the interim rule, if appropriate, in light of the comments received on the interim rule.

III. Request for Comments

The FDIC requests comments on all aspects of the proposed rulemaking. We solicit specific comments on: (1) Whether ''over $500,000'' is the proper threshold for determining coverage for revocable trust account owners based on the beneficial interests of the trust beneficiaries; (2) whether the FDIC's irrevocable trust account rules should be revised so that all trusts are covered by substantially the same rules; and (3) what effect the interim rule will have on the level of insured deposits.

IV. Paperwork Reduction Act

The interim rule will revise the FDIC's deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the interim rule will not have a significant impact on a substantial number of small entities. The interim rule simplifies the deposit insurance rules for revocable trust accounts held at FDIC-insured depository institutions.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681). The interim should have a positive effect on families by clarifying the coverage rules for revocable trust accounts, a popular type of consumer bank account.

VII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the interim rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (''SBREFA'') (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

VIII. Plain Language

The FDIC has sought to present the interim rule in a simple and straightforward manner. The FDIC invites comment on whether it could take additional steps to make the rule easier to understand.

[18] The reserve ratio is determined by dividing the DIF fund balance by the estimated insured deposits by the industry (12 U.S.C. 1817(l)).

[19] 5 U.S.C. 553.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. Section 330.10 is revised to read as follows:

§ 330.10 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured depository institution) in an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMDIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as *payable-on-death* accounts, *in-trust-for* accounts or *Totten Trust* accounts, and such formal trusts are commonly referred to as *living trusts or family trusts.* (*Example 1:* An individual has a living trust account with four beneficiaries named in the trust. The account owner has no other revocable trust accounts at the same FDIC-insured institution. The maximum insurance coverage would be $400,000, determined by multiplying 4 (the number of beneficiaries) times $100,000 (the current SMDIA). *Example 2:* An individual has a payable-on-death account naming his niece and cousin as beneficiaries and, at the same FDIC-insured institution, has another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $300,000. This is because the account owner has named three different beneficiaries in the revocable trust accounts. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.)

(b) *Required intention.* The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, *in trust for, as trustee for, payable-on-death to,* or any acronym therefore. In addition, for informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(c) *Definition of beneficiary.* For purposes of this section, a *beneficiary* includes natural persons as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of *beneficiary* in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMDIA per owner. (Example: If an individual establishes an account payable-on-death to a pet, the account would be insured as a single-ownership account.)

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMDIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMDIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMDIA or the aggregate amount of the ownership interests of each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary. (*Example:* A has a living trust account with a balance of $600,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $50,000, A's friend is entitled to $5,000 and a designated charity is entitled to $70,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse. In this case, because the balance of the account is over $500,000 (which is five times the current SMDIA of $100,000) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $500,000 or the aggregate of each different beneficiary's interest to a limit of $100,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $50,000 for each of the children (totaling $150,000), $5,000 for the friend, $70,000 for the charity, and $100,000 for the spouse ($375,000, subject to the $100,000 limit per beneficiary). The aggregate beneficial interests, thus, are $325,000. Hence, the maximum coverage afforded to the account owner would be $500,000, the greater of $500,000 or $325,000.)

(f) *Joint revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMDIA, subject to the limitation imposed in paragraph (e) of this section. (*Example 1:* A & B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage afforded to A&B would be $600,000, determined by multiplying the number of owners (2) times the SMDIA (currently $100,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $300,000 and B would be entitled to revocable trust coverage of $300,000. *Example 2:* A and B, two individuals, establish a payable-on-death account naming their two children, two cousins and a charity as beneficiaries. The balance in the account is $700,000. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage would be determined (under paragraph (a) of this section) by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $100,000, or $1 million. Because the account balance is less than the maximum coverage amount, the account would be fully insured. *Example 3:* A and B, two individuals, establish a living trust account with a balance of $1.5 million. Under the terms of the trust, upon the death of both A & B, each of A & B's three children is entitled to $200,000, B's cousin is entitled to $150,000, A's friend is entitled to

$30,000 and the remaining amount ($720,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each joint account owner, would be the greater of $500,000 or the aggregate amount (as to each joint owner) of the interest of each different beneficiary named in the trust, to a limit of $100,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner A are: $300,000 for the children (three times $100,000), $75,000 for the cousin, $15,000 for the friend and $100,000 for the charity ($360,000 subject to the $100,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage, thus, is $490,000. Hence, the maximum coverage afforded to joint account owner A would be $500,000, the greater of $500,000 or $490,000 (the aggregate of all the beneficial interests attributable to A, limited to $100,000 per beneficiary). The same analysis and coverage determination also would apply to B.

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a joint revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under section 330.9 and shall not be insured under the provisions of this section. (Example: If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life-estate interest for designated beneficiaries, the FDIC shall value each such life estate interest as the SMDIA for purposes of determining the insurance coverage available to the account owner.

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 330.13 on the insurance coverage of irrevocable trust accounts, a revocable trust account shall continue to be insured under the provisions of this section even if the corresponding revocable trust, upon the death of one or more of the owners thereof, converts, in part or entirely, to an irrevocable trust. (*Example:* Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall be effective as of September 26, 2008 for all existing and future revocable trust accounts and for existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

Dated at Washington DC, this 26th day of September 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–23058 Filed 9–26–08; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 906

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1206

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1701

RIN 2590–AA00

Assessments

AGENCIES: Federal Housing Finance Board; Office of Federal Housing Enterprise Oversight; Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board, Office of Federal Housing Enterprise Oversight and Federal Housing Finance Agency (FHFA) are establishing policy and procedures for the FHFA to impose assessments on the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal Home Loan Banks (Banks) (collectively, Regulated Entities), through a final rule, pursuant to 12 U.S.C. 4516.

DATES: The final rule will become effective on September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Frank Wright, Senior Counsel (OFHEO), (202) 414–6439; Mark Kinsey, Chief Financial Officer (OFHEO), (202) 414–3816; Michele Horowitz, Chief Financial Officer (FHFB), (202) 408–2878; Janice A. Kaye, Associate General Counsel (FHFB), (202) 408–2505 (not toll free numbers), Fourth Floor, 1700 G Street, NW., Washington DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 2008, the President signed the Federal Housing Finance Regulatory Reform Act of 2008 (Act) (Pub. L. 110–289, 122 Stat. 2564). Among other things, the Act transferred the supervisory and oversight responsibilities over the Banks, Fannie Mae, and Freddie Mac to a new independent executive branch agency known as the Federal Housing Finance Agency. To fund the operations of the FHFA, the Act amended section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), codified at 12 U.S.C. 4516. The Act also removed the provisions of section 38 of the Federal Home Loan Bank Act, which were codified at 12 U.S.C. 1438(b), that had authorized the Federal Housing Finance Board (FHFB) to impose assessments on the Banks in an amount sufficient to provide for the payment of the FHFB's estimated expenses for the period covered by the assessment. This final rule will implement the FHFA's authority to establish and collect assessments from the Regulated Entities and will also remove the regulatory provisions that had implemented the authority of the Office of Federal Housing Enterprise Oversight (OFHEO) to assess Fannie Mae and Freddie Mac (12 CFR part 1701) and the authority of the FHFB to assess the Banks (12 CFR 906.1–2).

II. Analysis of the Final Rule

In accordance with section 1316A of the Act, part 1206 of the final rule authorizes the FHFA to impose assessments on the Regulated Entities to pay its estimated costs and expenses. *See* 12 U.S.C. 4516. The rule recognizes and addresses the differences between the Banks and the Enterprises, where appropriate.

The final rule authorizes the FHFA to establish annual assessments for the Regulated Entities to provide for the payment of the FHFA's costs and expenses and maintain a working capital fund. The final rule provides for the allocation of the annual assessments between the Enterprises and the Banks, with the Enterprises paying proportional shares sufficient to provide for payment of the costs and expenses

relating to the Enterprises, and the Banks paying proportional shares sufficient to provide for payment of the costs and expenses relating to the Banks. The shares paid by the Enterprises will be based on the proportions of total exposure for the Enterprises, and the shares paid by the Banks will be based on the proportions of their minimum required regulatory capital, a measure based on the capital that the Banks are required to hold by their regulator, rather than a measure of actual capital held. Under this rule, each Regulated Entity must pay an amount equal to one-half of its annual assessment twice each year. This represents a significant change to the assessment procedure of the FHFB, under which the FHFB made an assessment annually and the Banks made payments in monthly installments.

This final rule also establishes the procedure for the FHFA to increase or adjust the amount of the semiannual payment for a Regulated Entity or to make additional assessments for a Regulated Entity, under certain circumstances.

This final rule also implements another significant change in establishing the procedures for collecting funds for a working capital fund for the FHFA, under which the FHFA shall collect those assessments deemed necessary to establish an operating reserve that is intended to provide for the payment of large or multiyear capital and operating expenditures, as well as unanticipated expenses.

The final rule also implements notice and review provisions for the FHFA under which the FHFA will provide to each Regulated Entity written notice of the projected budget for the FHFA for the upcoming year, and the assessments and semiannual payments to be collected under this rule.

Notice and Public Participation

The notice and comment procedure required by the Administrative Procedure Act is inapplicable to this final rule because it is a rule of agency procedure. *See* 5 U.S.C. 553(b)(3)(A).

Paperwork Reduction Act

The regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

Because the FHFA is promulgating part 1206 in the form of a final rule and not as a proposed rule, the provisions of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2), 603(a).

List of Subjects

12 CFR Part 906

Assessments, Federal home loan banks, Government contracts, Minority businesses, Mortgages, Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 1206

Assessments, Federal home loan banks, Government Sponsored Enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1701

Government Sponsored Enterprises, Reporting and recordkeeping requirements.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, the Federal Housing Finance Agency hereby amends chapters IX, XII, and XVII of Title 12, Code of Federal Regulations as follows:

Chapter IX—Federal Housing Finance Board

PART 906—OPERATIONS

■ 1. The authority citation for part 906 is revised to read as follows:

Authority: 12 U.S.C. 4516.

Subpart A—[Removed]

■ 2. Remove and reserve subpart A, consisting of §§ 906.1 through 906.2.

Chapter XII—Federal Housing Finance Agency

■ 3. Add Subchapter A, consisting of part 1206 to read as follows:

Subchapter A—Organization and Operations

PART 1206—ASSESSMENTS

Sec.

1206.1 Purpose.
1206.2 Definitions.
1206.3 Annual assessments.
1206.4 Increased costs of regulation.
1206.5 Working capital fund.
1206.6 Notice and review.
1206.7 Delinquent payment.
1206.8 Enforcement of payment.

Authority: 12 U.S.C. 4516.

§ 1206.1 Purpose.

This part sets forth the policy and procedures of the FHFA with respect to the establishment and collection of the assessments of the Regulated Entities under 12 U.S.C. 4516.

§ 1206.2 Definitions.

As used in this part:

Act means the Federal Housing Finance Regulatory Reform Act of 2008.

Adequately capitalized means the adequately capitalized capital classification under 12 U.S.C. 1364 and related regulations.

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

Enterprise means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and ''Enterprises'' means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Federal Home Loan Bank, or *Bank,* means a Federal Home Loan Bank established under section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432).

FHFA means the Federal Housing Finance Agency.

Minimum required regulatory capital means the highest amount of capital necessary for a Bank to comply with any of the capital requirements established by the Director and applicable to it.

Regulated Entity means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any of the Federal Home Loan Banks.

Surplus funds means any amounts that are not obligated as of September 30 of the fiscal year for which the assessment was made.

Total exposure means the sum, as of the most recent June quarterly minimum capital report of the Enterprise, of the amounts of the following assets and off-balance sheet obligations that are used to calculate the quarterly minimum capital requirement of the Enterprise under 12 CFR part 1750:

(1) On-balance sheet assets;

(2) Guaranteed mortgage-backed securities; and

(3) Other off-balance sheet obligations as determined by the Director.

Working capital fund means an account for amounts collected from the Regulated Entities to establish an operating reserve that is intended to provide for the payment of large or multiyear capital and operating expenditures, as well as unanticipated expenses.

§ 1206.3 Annual assessments.

(a) *Establishing assessments.* The Director shall establish annual assessments on the Regulated Entities in an amount sufficient to maintain a working capital fund and provide for the payment of the FHFA's costs and expenses, including, but not limited to:

(1) Expenses of any examinations under 12 U.S.C. 4517 and section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440);

(2) Expenses of obtaining any reviews and credit assessments under 12 U.S.C. 4519;

(3) Expenses of any enforcement activities under 12 U.S.C. 3645;

(4) Expenses of other FHFA litigation under 12 U.S.C. 4513;

(5) Expenses relating to the maintenance of the FHFA records relating to examinations and other reviews of the Regulated Entities;

(6) Such amounts in excess of actual expenses for any given year deemed necessary to maintain a working capital fund;

(7) Expenses relating to monitoring and ensuring compliance with housing goals;

(8) Expenses relating to conducting reviews of new products;

(9) Expenses related to affordable housing and community programs;

(10) Other administrative expenses of the FHFA;

(11) Expenses related to preparing reports and studies;

(12) Expenses relating to the collection of data and development of systems to calculate the House Price Index (HPI) and the conforming loan limit;

(13) Amounts deemed necessary by the Director to wind up the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board; and

(14) Expenses relating to other responsibilities of the FHFA under the Safety and Soundness Act, the Federal Home Loan Bank Act and the Act.

(b) *Allocating assessments.* The Director shall allocate the annual assessments as follows:

(1) *Enterprises.* Assessments collected from the Enterprises shall not exceed amounts sufficient to provide for payment of the costs and expenses relating to the Enterprises as determined by the Director. Each Enterprise shall pay a proportional share that bears the same ratio to the total portion of the annual assessment allocated to the Enterprises that the total exposure of each Enterprise bears to the total exposure of both Enterprises.

(2) *Federal Home Loan Banks.* Assessments collected from the Banks shall not exceed amounts sufficient to provide for payment of the costs and expenses relating to the Banks as determined by the Director. Each Bank shall pay a *pro rata* share of the annual assessments based on the ratio between its minimum required regulatory capital and the aggregate minimum required regulatory capital of every Bank.

(c) *Timing and amount of semiannual payment.* Each Regulated Entity shall pay on or before October 1 and April 1 an amount equal to one-half of its annual assessment.

(d) *Surplus funds.* Surplus funds shall be credited to the annual assessment by reducing the amount collected in the following semiannual period by the amount of the surplus funds. Surplus funds shall be allocated to all Regulated Entities in the same proportion in which they were collected, except as determined by the Director.

§ 1206.4 Increased costs of regulation.

(a) *Increase for inadequate capitalization.* The Director may, at his or her discretion, increase the amount of a semiannual payment allocated to a Regulated Entity that is not classified as adequately capitalized to pay additional estimated costs of regulation of that Regulated Entity.

(b) *Increase for enforcement activities.* The Director may, at his or her discretion, adjust the amount of a semiannual payment allocated to a Regulated Entity to ensure that the Regulated Entity bears the estimated costs of enforcement activities under the Act related to that Regulated Entity.

(c) *Additional assessment for deficiencies.* At any time, the Director may make and collect from any Regulated Entity an assessment, payable immediately or through increased semiannual payments, to cover the estimated amount of any deficiency for the semiannual period as a result of increased costs of regulation of a Regulated Entity due to its classification as other than adequately capitalized, or as a result of enforcement activities related to that Regulated Entity. Any amount remaining from such additional assessment and the semiannual payments at the end of any semiannual period during which such an additional assessment is made shall be deducted *pro rata* (based upon the amount of the additional assessments) from the assessment for the following semiannual period for that Regulated Entity.

§ 1206.5 Working capital fund.

(a) *Assessments.* The Director shall establish and collect from the Regulated Entities such assessments he or she deems necessary to maintain a working capital fund.

(b) *Purposes.* Assessments collected to maintain the working capital fund shall be used to establish an operating reserve and to provide for the payment of large or multiyear capital and operating expenditures as well as unanticipated expenses.

(c) *Remittance of excess assessed funds.* At the end of each year for which an assessment under this section is made, the Director shall remit to each Regulated Entity any amount of assessed and collected funds in excess of the amount the Director deems necessary to maintain a working capital fund in the same proportions as paid under the most recent annual assessment.

§ 1206.6 Notice and review.

(a) *Written notice of budget.* The Director shall provide to each Regulated Entity written notice of the projected budget for the Agency for the upcoming fiscal year. Such notice shall be provided at least 30 days before the beginning of the applicable fiscal year.

(b) *Written notice of assessments.* The Director shall provide each Regulated Entity with written notice of assessments as follows:

(1) *Annual assessments.* The Director shall provide each Regulated Entity with written notice of the annual assessment and the semiannual payments to be collected under this part. Notice of the annual assessment and semiannual payments shall be provided before the start of the new fiscal year.

(2) *Immediate assessments.* The Director shall provide each Regulated Entity with written notice of any immediate assessments to be collected under § 1206.4 of this chapter. Notice of any immediate assessment and the required payments shall be provided at such reasonable time as determined by the Director.

(3) *Changes to assessments.* The Director shall provide each Regulated Entity with written notice of any changes in the assessment procedures that the Director, in his or her sole discretion, deems necessary under the circumstances.

(c) *Request for review.* At the written request of a Regulated Entity, the Director, in his or her discretion, may review the calculation of the proportional share of the annual assessment, the semiannual payments, and any partial payments to be collected under this part. The determination of the Director upon such review is final. Except as provided by the Director, review by the Director does not suspend the requirement that the Regulated Entity make the semiannual payment or partial payment on or before the date it is due. Any adjustments determined appropriate shall be credited or otherwise addressed by the following year's assessment for that entity.

§ 1206.7 Delinquent payment.

The Director may assess interest and penalties on any delinquent semiannual payment or other payment assessed under this part in accordance with 31 U.S.C. 3717 (interest and penalty on claims) and part 1704 of this title (debt collection).

§ 1206.8 Enforcement of payment.

The Director may enforce the payment of any assessment under 12 U.S.C. 4631 (cease-and-desist proceedings), 12 U.S.C. 4632 (temporary cease-and-desist orders), and 12 U.S.C. 4626 (civil money penalties).

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development

PART 1701—[REMOVED]

■ 4. Remove part 1701.

Dated: September 25, 2008.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–23046 Filed 9–26–08; 4:15 pm]

BILLING CODE 4220–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 163, and 178

[Docket No. USCBP–2007–0062; CBP Dec. 08–24]

RIN 1505–AB82

Haitian Hemispheric Opportunity Through Partnership Encouragement Acts of 2006 and 2008

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to title 19 of the Code of Federal Regulations which were published in the **Federal Register** on June 22, 2007, as CBP Dec. 07–43 to implement the duty-free provisions of the Haitian Hemispheric Opportunity through Partnership Encouragement (''HOPE I'') Act of 2006. The regulatory amendments adopted as a final rule in this document include changes necessitated by enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement (''HOPE II'') Act of 2008.

DATES: This final rule is effective on September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Textile Operational Aspects: Robert Abels, Office of International Trade, (202) 863–6503.

Other Operational Aspects: Heather Sykes, Office of International Trade, (202) 863–6099.

Legal Aspects: Cynthia Reese, Office of International Trade, (202) 572–8812, or Craig Walker, Office of International Trade, (202) 572–8836.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2007, interim regulations were promulgated to implement the duty-free provisions of the Haitian Hemispheric Opportunity through Partnership Encouragement (''HOPE I'') Act of 2006. The regulatory amendments adopted as a final rule in this document include changes necessitated by the June 18, 2008 enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement (''HOPE II'') Act of 2008. Detailed information on both the HOPE I and HOPE II Acts follows.

Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006

On December 20, 2006, the President signed into law the Tax Relief and Health Care Act of 2006 (''the 2006 Act''), Public Law 109–432, 120 Stat. 2922. Title V of the Act concerns the extension of certain trade benefits to Haiti and is referred to in the Act as the ''Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006'' (''HOPE I Act'').

Section 5002 of the Act amended the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707) by adding a new section 213A, entitled ''Special Rules for Haiti'' and codified at 19 U.S.C. 2703A, to authorize the President to extend additional trade benefits to Haiti for a five-year period (ending on December 19, 2011) if the President determines that the country meets certain specified eligibility conditions and requirements. As created by the HOPE I Act, section 213A of the CBERA consisted of six principal subsections, each of which is summarized below.

Subsection (a) of section 213A of the CBERA set forth definitions of several terms used in section 213A. Subsection (b) of section 213A specified the conditions and requirements that must be met for certain apparel articles from Haiti to receive duty-free treatment. Subsection (c) of section 213A of the CBERA provided for the duty-free treatment of any article classifiable in subheading 8544.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS) (wiring sets), as in effect on December 20, 2006, that is the product or manufacture of Haiti and is imported directly from Haiti into the customs territory of the United States, provided a specified value-content requirement is met.

Subsection (d) of section 213A set forth certain eligibility requirements that Haiti must meet as a prerequisite for articles to receive duty-free treatment under this section. This subsection required that the President determine whether Haiti met these requirements within 90 days after the date of enactment of the HOPE Act (or by March 20, 2007).

Subsection (e) of section 213A (redesignated as subsection (f) by HOPE II Act) provided that preferential tariff treatment for apparel articles under this section shall not apply unless the President certifies to Congress that Haiti is meeting certain conditions, such as the adoption of an effective visa system, that are primarily intended to avoid illegal transshipment situations.

Subsection (f) of section 213A (redesignated as subsection (g) by HOPE II Act) provided that the President shall issue regulations to carry out this section not later than 180 days after the date of enactment of the HOPE Act. Section 213A(f) further provided that the President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate in preparing such regulations. CBP consulted with the Committee on Ways and Means and the Committee on Finance regarding the implementing interim regulations.

For a more detailed description of the statutory provisions set forth in the HOPE I Act, please see CBP Dec. 07–43.

On March 19, 2007, the President signed Proclamation 8114 to implement the provisions of the HOPE I Act, among other purposes. The Proclamation, which was published in the **Federal Register** on March 22, 2007 (72 FR 13655), included determinations by the President that Haiti (1) meets the eligibility requirements set forth in section 213A(d) of the CBERA and (2) is meeting the conditions set forth in section 213A(e) (redesignated as section 213A(f) by HOPE II). The Proclamation also modified subchapter XX of Chapter 98 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as set forth in Annex 1 to the Proclamation. The

modifications to the HTSUS included the creation of new subheadings encompassing the various articles that are eligible for duty-free treatment under the HOPE Act.

On June 22, 2007, Customs and Border Protection (''CBP'') published in the **Federal Register** (72 FR 34365) as CBP Dec. 07–43 an interim rule setting forth amendments to title 19 of the Code of Federal Regulations (''CFR'') to implement the duty-free provisions of the HOPE I Act set forth in subsections (a) through (c) of section 213A of the CBERA. As the HOPE Act was signed on December 20, 2006, implementing regulations were due on June 20, 2007 by subsection (f) of section 213A of the CBERA. In order to provide transparency and facilitate their use, the interim implementing regulations were included within new subpart O in part 10 of the CBP regulations (19 CFR part 10, subpart O). Action to adopt these interim regulations as a final rule was withheld pending anticipated action on the part of Congress to amend the underlying statutory provisions in the Food, Conservation and Energy Act of 2008 (Haiti HOPE II Act).

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on June 22, 2007, CBP Dec. 07–43 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on August 21, 2007. A discussion of the comments received by CBP is set forth below.

Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008

On May 21, 2008, the Food, Conservation and Energy Act of 2008 (Pub. L. 110–234) (''2008 Act'') became law when Congress overrode the President's veto of this legislation. Part I, Subtitle D, Title XV of the 2008 Act, referred to in the Act as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act), amended certain provisions of section 213A of the CBERA. The HOPE II Act amendments that require implementation through regulation by CBP are set forth in section 15402 of the 2008 Act, which amended subsections (a) and (b) of section 213A of the CBERA concerning the textile and apparel articles to which preferential tariff treatment applies under this program. A summary of the principal substantive amendments to section 213A(b) effected by section 15402 of the 2008 Act are set forth below.

1. Section 213A(a) was amended by adding definitions of the terms ''imported directly from Haiti or the Dominican Republic'', ''knit-to-shape'', and ''wholly assembled''. It is noted that the statutory ''knit-to-shape'' definition requires no change to the interim regulatory text as this definition is nearly identical to the definition of the same term set forth in the interim regulations (*see* 19 CFR 10.842(j)). The remaining two new statutory definitions referenced above require changes to the interim regulatory text.

2. Re-designated section 213A(b)(1)(A) (formerly 231A(b)(1) under the HOPE I Act) was amended to provide that apparel articles of a producer or entity controlling production may be imported directly from Haiti *or* the Dominican Republic. Under the HOPE I Act, such articles were required to be imported directly from Haiti.

3. Re-designated section 213A(b)(1)(B)(iv)(IV) (formerly 213A(b)(2)(D)(iv) under the HOPE I Act), was amended by deleting references to specific apparel articles (*i.e.*, woven articles and brassieres) that may or may not be included in the annual aggregation calculation for purposes of meeting the applicable value-content requirement for apparel articles of a producer or entity controlling production. This provision now states, more generally, that entries of apparel articles receiving preferential treatment under any provision of law (other than under section 213A(b)(1)) or are subject to the ''General'' subcolumn of column 1 of the HTSUS are not included in the annual aggregation calculation unless the producer or entity controlling production elects to include those entries.

4. Re-designated section 213A(b)(1)(C) (formerly section 213A(b)(3) under the HOPE I Act), was amended by revising the annual quantitative limits for the third through the fifth applicable 1-year periods that apply to apparel articles of a producer or entity controlling production. The amendments to this provision do not require changes to the interim regulatory text.

5. Former section 213A(b)(4), which set forth the conditions and requirements that must be met for certain woven apparel articles of chapter 62 of the HTSUS from Haiti to receive duty-free treatment, was removed and a new section 213A(b)(2) was added. This new provision provides for the duty-free treatment of any knit article of chapter 61 (subject to certain exclusions) or any woven article of chapter 62 of the HTSUS that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to certain specified quantitative limitations. The exclusions from the special rule for articles of chapter 61 of the HTSUS include certain T-shirts, singlets, sweatshirts, and pullovers for men or boys. The duty-free treatment provided for in new section 213A(b)(2) is effective from October 1, 2008, through September 30, 2018.

6. Former section 213A(b)(5), which set forth the conditions and requirements that must be met for articles of subheading 6212.10, HTSUS (brassieres), to receive duty-free treatment was removed and a new section 213A(b)(3) was added, which provides for the duty-free treatment of certain apparel articles (including brassieres) and other articles set forth below. The duty-free treatment provided for in new section 213A(b)(3) is effective from October 1, 2008, through September 30, 2018, and is not subject to quantitative limitations. The articles to which this provision applies are as follows:

a. Articles of subheading 6212.10, HTSUS (brassieres), that are wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and are imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made;

b. Any of the following apparel articles that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(i) Any apparel article that is of a type listed in chapter rule 3, 4, or 5 for chapter 61 of the HTSUS (as such chapter rules are contained in section A of the Annex to Presidential Proclamation 8213 of December 20, 2007) as being excluded from the scope of such chapter rule, except that, for purposes of this provision, reference in such chapter rules to subheading

6104.12.00, HTSUS, is deemed to refer to subheading 6104.19.60, HTSUS; and

(ii) Any apparel article (other than articles of subheading 6212.10 of the HTSUS) that is of a type listed in chapter rule 3(a), 4(a), or 5(a) for chapter 62 of the HTSUS, as such chapter rules are contained in paragraph 9 of section A of the Annex to Presidential Proclamation 8213 of December 20, 2007;

c. Articles of subheading 4202.12, 4202.22, 4202.32, or 4202.92, HTSUS that are wholly assembled in Haiti and are imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, components, or materials from which the article is made;

d. Articles of heading 6501, 6502, or 6504, or subheading 6505.90, HTSUS, that are wholly assembled, knit-to-shape, or formed in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and are imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made; and

e. Any of the following apparel articles that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(i) Pajama bottoms and other sleepwear for women and girls, of cotton, of subheading 6208.91.30, HTSUS, or of man-made fibers, of subheading 6208.92.00, HTSUS; and

(ii) Pajama bottoms and other sleepwear for girls, of other textile materials, of subheading 6208.99.20 HTSUS.

7. Section 213A(b) was amended by adding a new paragraph (4) which provides for the duty-free treatment of apparel articles that are wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate issued by the Department of Commerce reflecting the amount of credits equal to the total square meter equivalents of such apparel articles and the articles are imported directly from Haiti or the Dominican Republic. The duty-free treatment provided for in new section 213A(b)(4) is effective from October 1, 2008, through September 30, 2018, and is not subject to quantitative limitations.

8. Section 213A(b) was further amended by adding a new paragraph (5) that provides for the duty-free treatment of apparel articles that are wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabrics, fabric components, components knit-to-shape, or yarns from which the article is made, if the fabrics, fabric components, components knit-to-shape, or yarns comprising the component that determines the tariff classification of the article are of any of the fabrics or yarns set forth below and the articles are imported directly from Haiti or the Dominican Republic. The duty-free treatment provided for in new section 213A(b)(5) is effective from October 1, 2008, through September 30, 2018, and is not subject to quantitative limitations.

a. Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA); or

b. Fabrics or yarns, to the extent that such fabrics or yarns are designated as not being available in commercial quantities for purposes of:

(i) Section 213(b)(2)(A)(v) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v));

(ii) Section 112(b)(5) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5));

(iii) Section 204(b)(3)(B)(i)(III) or 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(i)(II) or 3203(b)(3)(B)(ii)); or

(iv) Any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential tariff treatment is made.

Regulatory Amendments To Reflect Changes Made by the HOPE II Act

As noted earlier, this final rule incorporates in the regulatory text certain statutory changes made to section 213A of the CBERA by the HOPE II Act. Because these changes to the interim regulatory text, described below, are not interpretative in nature but closely reflect the language of the statute, they are included in this final rule without need for comment. Section 15407 of the 2008 Act provides that regulations necessary to carry out section 15402 must be issued not later than September 30, 2008, and section 15412 of the 2008 Act provides that section 15402 shall take effect on October 1, 2008, and shall apply to articles entered, or withdrawn from warehouse for consumption, on or after that date.

1. The heading to 19 CFR part 10, subpart O has been revised to add a reference to the HOPE II Act;

2. Section 10.841, regarding the applicability of subpart O, has been revised to add a reference to the HOPE II Act;

3. In § 10.842(p), the definition of ''wholly assembled in Haiti'' has been revised to conform to the statutory definition of the term set forth in the HOPE II Act;

4. As a result of the amendments to section 213A of the CBERA effected by the HOPE II Act, all of the textile and apparel articles to which duty-free treatment applies under this program must be ''imported directly from Haiti or the Dominican Republic.'' Under the HOPE I Act, all eligible articles were required to be ''imported directly from Haiti''. However, no change was made by the HOPE II Act to the ''imported directly'' requirement for articles eligible for duty-free treatment under section 213A(c) of the CBERA (wiring sets). Therefore, those articles must continue to be ''imported directly from Haiti''. Accordingly, the introductory text to § 10.843, which sets forth a list of the articles to which duty-free treatment applies under this program, has been revised to reflect this disparity in treatment between textile and apparel articles on the one hand and wiring sets on the other with regard to the ''imported directly'' requirement;

5. Section 10.843 has been further amended to reflect the new and revised categories of textile and apparel articles that are eligible for duty-free treatment under the HOPE II Act;

6. In § 10.844, relating to the value-content requirement for apparel articles of a producer or entity controlling production:

a. Paragraph (a)(2)(iii) has been revised to reflect the new statutory language (*see* section 213A(b)(1)(B)(iv)(IV) of the CBERA) concerning exclusions from the annual aggregation calculation;

b. Paragraph (a)(5)(ii)(D) has been revised to replace the words ''under the Bipartisan Trade Promotion Authority Act of 2002'' with the words ''with respect to the United States'' to conform to an amendment to re-designated

section 213A(b)(1)(B)(vii)(I)(bb)(DD) of the CBERA (formerly section 213A(b)(2)(G)(i)(II)(dd)) by the HOPE II Act; and

c. Paragraph (c)(2) has been revised to replace the words ''under the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3801 *et seq.*)'' with the word ''thereafter'' to conform to an amendment to re-designated section 213A(b)(1)(B)(iii)(II) of the CBERA (formerly section 213A(b)(2)(C)(ii)) by the HOPE II Act;

7. Section 10.846, relating to the ''imported directly'' requirement, has been revised to reflect the statutory definition of the term ''imported directly from Haiti or the Dominican Republic'' created by the HOPE II Act (*see* section 213A(a)(3) of the CBERA). As noted previously, while the ''imported directly from Haiti or the Dominican Republic'' requirement applies to all textile and apparel articles eligible for duty-free treatment under this program, it does not apply to articles eligible for duty-free treatment under section 213A(c) of the CBERA (wiring sets). Those articles must continue to be ''imported directly from Haiti''. Therefore, § 10.846 has been further revised to clarify that wiring sets are subject to the ''imported directly from Haiti'' requirement, as those words are currently defined in § 10.846 of the interim rule. However, consistent with the statutory definition of ''imported directly from Haiti or the Dominican Republic'', the definition of ''imported directly from Haiti'' has been altered by removing the words ''provided that the articles are imported as a result of the original commercial transaction between the importer and the producer or the producer's sales agent'', as set forth in current § 10.846(a)(3)(ii) of the interim rule; and

8. Section 10.847(a), concerning the filing of claims for duty-free treatment for articles described in § 10.843, has been revised to set forth the new subheadings within Subchapter XX of Chapter 98 of the HTSUS under which the new categories of textile and apparel articles created by HOPE II are classified.

This final rule document addresses the comments submitted in response to the interim rulemaking published as CBP Dec. 07–43 and adopts, as a final rule, the HOPE I Act implementing regulations contained in the interim rule document with changes reflecting the statutory amendments made by the HOPE II Act as well as other changes identified below in the discussion of public comments received.

Discussion of Comments in Response to CBP Dec. 07–43

A total of 8 commenters responded to the solicitation of public comments on the interim regulations set forth in CBP Dec. 07–43. It is noted that these comments were received prior to the recent statutory changes effected by the HOPE II Act. To the extent that the comments received were unaffected by these subsequent changes, CBP has responded. References in this comment discussion to the ''HOPE Act'' are intended to refer to the HOPE program in general.

General Comments Regarding Interpretation and Implementation of the HOPE Act

1. *Comment:* Five commenters pointed out that section 5004 of the Act expresses the ''sense of the Congress that the executive branch * * * should interpret, implement, and enforce'' the preference provisions under the HOPE Act for textile and apparel articles ''broadly in order to expand trade by maximizing opportunities for imports of such articles from Haiti.'' In view of this statement of the intent of Congress, these commenters urged that the HOPE Act final regulations be interpreted and issued in a manner that will expand, and not restrict, trade with Haiti.

CBP's Response: CBP is cognizant of Congressional desire that the HOPE Act benefit Haiti to the maximum extent possible and that the executive branch, in matters subject to interpretation, choose the interpretation most beneficial to Haiti that is legally supportable. CBP endeavored to adhere to this mandate while drafting regulations to implement the specific language of the statute which created special tariff preference provisions for Haiti within the existing framework of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 *et seq.*).

2. *Comment:* One commenter indicated that as ''the textile and apparel trade has the highest fraud content of any manufactured good'', it is imperative that the regulations implementing the HOPE Act be written in a way that provides for meaningful and effective customs enforcement while allowing for the flow of legitimate trade. The commenter stated that the interim regulations are a reasonable approach to achieving this objective and commended CBP for its efforts in this regard. This commenter also stated that it was very encouraged to see an emphasis on importer requirements throughout the HOPE regulations as importers of textile products should be held more accountable for their transactions and the preference claims made on goods they import into the United States. In addition, this commenter expressed strong support for the ''penalty provisions'' set forth in the HOPE I Act implementing regulations (*e.g.*, denial of duty-free treatment for failure to meet applicable requirements and the imposition of an increased value-content percentage requirement under certain circumstances) and stated that, through these provisions, CBP has built in very strong incentives for compliance.

CBP's Response: CBP appreciates the comment as it always strives to balance the goals of effective enforcement while facilitating the flow of legitimate commerce.

3. *Comment:* One commenter noted that the interim regulations were issued some months after the commencement of the first statutory applicable year and urged CBP to issue the final regulations on an expeditious basis so that companies may rely on clear, transparent, and predictable rules to conduct business with Haiti.

CBP's Response: CBP notes that the date of enactment of the HOPE I Act (December 20, 2006) marked the beginning of the first of five one-year periods during which certain apparel articles from Haiti may be eligible for duty-free treatment under the Act. However, the Haiti Act preference program for apparel articles was implemented by Presidential Proclamation effective with respect to goods entered, or withdrawn from warehouse, on or after March 20, 2007 (*see* Proclamation 8114 dated March 19, 2007, published in the **Federal Register** on March 22, 2007 (72 FR 13655)). CBP awaited the publication of Presidential Proclamation 8114 so that its interim regulations would be complete. The interim regulations implementing the HOPE I Act were required to be issued not later than 180 days after December 20, 2006, and the interim regulations were published in the **Federal Register** on June 22, 2007.

CBP notes that issuance of this final rule was delayed pending anticipated action on the part of Congress to amend the underlying statutory provisions which resulted in the HOPE II Act.

4. *Comment:* One commenter urged that the visa system for the HOPE program be deployed in such a way that it facilitates trade and does not impose additional hurdles or burdens for Haitian exporters or U.S. importers. This commenter indicated that it had heard reports that, due to problems in the administration of the visa system, several companies have been unable to export goods to the United States.

CBP's Response: The HOPE Act requires the establishment of a visa system to ensure that only those apparel articles that meet the applicable requirements for preferential tariff treatment under the Act receive the benefits of that treatment. An effective visa system affords Haiti the ability to administer and enforce the program with respect to exports of apparel articles to the United States and allows the United States to monitor imports of such articles from that country. CBP does not believe that the HOPE Act visa system currently in place is too complex or imposes unreasonable burdens on Haitian exporters or U.S. importers. It is noted that the Haitian government has not communicated to CBP that it is experiencing difficulties in implementing the visa system.

Definitions

5. *Comment:* Six of the commenters asserted that the definition of ''wholly assembled in Haiti'' set forth in § 10.842(p) of the interim regulations is overly restrictive in that it requires that *all* of the components of the article (including minor components) be joined together in Haiti. Five of these commenters stated that this phrase must be read in the light of the clear intent of the legislation to provide for non-origin conferring events and operations to be performed within HOPE Act eligible countries. Four commenters suggested that the definition of the phrase should follow the more liberal definition set forth in § 102.21(b)(6) of the CBP regulations, which would allow minor parts to be added in eligible countries other than Haiti. One of these commenters recommended that the HOPE Act preference provisions be more broadly applied to textile and apparel articles from Haiti or the designated beneficiary countries as long as the key assembly operations are performed in Haiti.

CBP's Response: The definition of ''wholly assembled in Haiti'' set forth in § 10.842(p) has been revised in this final rule document to conform to the statutory definition of that term set forth in the HOPE II Act (*see* section 213A(a)(5) of the CBERA). CBP believes that this statutory and resulting regulatory change addresses these commenters' concerns.

6. *Comment:* One commenter stated that the definitions should make clear that not all cutting and sewing is required in Haiti and that, specifically, cutting and sewing operations performed in the United States would not disqualify a garment.

CBP's Response: Although the HOPE Act requires apparel articles of a producer or entity controlling production to be wholly assembled or knit-to-shape in Haiti (as those terms are defined in section 213A(a) of the CBERA), it allows the materials (*e.g.*, fabric components) from which the articles are made to be produced anywhere. *See* section 213A(b)(1)(B)(i)(I) and section 213A(b)(1)(B)(ii)((I) of the CBERA. ''Fabric component'' is defined in § 10.842(g) of the HOPE Act implementing regulations as ''a component cut from fabric to the shape or form of the component as it is used in the apparel article.'' Therefore, CBP believes it is clear from the statute and the implementing regulations that cutting operations may be performed outside of Haiti.

In regard to sewing, CBP believes that the revised definition of ''wholly assembled in Haiti'' set forth in § 10.842(p) of this final rule document, which conforms to the statutory definition of that term set forth in the HOPE II Act, addresses the commenter's concerns.

Annual Aggregation

7. *Comment:* Five commenters stated that the final regulations should clarify, through the use of specific examples, the application of the annual aggregation method in meeting the value-content requirement for apparel articles that are wholly assembled or knit-to-shape in Haiti. Three of these commenters raised certain specific issues regarding the annual aggregation method by offering the exact same scenarios and questions as follows:

a. Haitian Producer A elects to use the annual aggregation method in the initial applicable one-year period, and also elects, pursuant to § 10.844(a)(2)(iii)(C) of the interim regulations, to include in the aggregation calculation entries of apparel articles receiving preferential tariff treatment under other preference programs as well as articles subject to a Normal Trade Relations (NTR) rate of duty. Producer A ships to the United States four shipments during the initial applicable one-year period (all are entered during that period). The first shipment of apparel (qualifying for preference under the Caribbean Basin Trade Partnership Act (CBTPA)) has an appraised value of $100,000 and meets a value-content percentage (under § 10.844(a)) of 80%. The second shipment of apparel is wholly assembled in Haiti, has an appraised value of $100,000, and meets a value-content percentage of 40%. The third shipment is wholly assembled in Haiti, has an appraised value of $50,000, and meets a value-content percentage of 0%. The last shipment is wholly assembled in Haiti, has an appraised value of $20,000, and meets a value-content requirement of 80%. Taken together, the four shipments have an appraised value of $270,000 and meet a value-content percentage of 50.4%. Will all apparel goods that are shipped to the U.S. in the last three shipments by Producer A qualify for duty-free treatment under the HOPE Act?

b. Importer D, an entity controlling production, purchases apparel articles that are wholly assembled in Haiti from Producers A, B, and C and enters those articles during the initial applicable one-year period. Importer D elects to use the annual aggregation method during that period. The three producers also produce apparel for other U.S. importers and each producer elects to use the annual aggregation method. The total appraised value of the apparel purchased by Importer D from the three producers and entered during the initial applicable one-year period is $300,000, and these shipments meet a value-content percentage of 51.7%. However, the value-content percentage met by all the apparel that is wholly assembled in Haiti by Producer C and entered (including the apparel imported by Importer D) during the initial applicable one-year period is 49%. Does the failure of Producer C to meet the applicable value-content requirement for the apparel that it produces during this period affect the preferential status of the apparel articles produced by Producer C and imported by Importer D?

CBP's Response: Based on the facts presented in the first scenario, the apparel articles that were wholly assembled in Haiti and shipped to the U.S. in the last three shipments by Producer A would qualify for duty-free treatment under the HOPE Act, as the applicable value-content requirement for the initial applicable one-year period (50%) would be met. This conclusion assumes that: (1) The CBTPA-eligible apparel articles in the first shipment (that were included in the annual aggregation calculation at the election of the producer) were wholly assembled or knit-to-shape in Haiti, as required by § 10.844(a)(2)(iii)(C); and (2) the articles in the last three shipments satisfy all other applicable requirements set forth in subpart O, part 10, CBP regulations (*e.g.*, declaration of compliance and ''imported directly'' requirements).

In regard to the facts set forth in the second scenario, pursuant to section 213A(b)(1)(iv)(I) of the CBERA and § 10.844(a)(2)(i) of the interim regulations, in determining whether apparel articles of a producer or entity

controlling production that are entered under the annual aggregation method in the initial applicable one-year period satisfy the applicable value-content requirement (50%) in that period, ''all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered in the initial applicable one-year period'' must be considered. Thus, for the entity controlling production in this scenario (Importer D), the apparel articles that must be considered are those that are purchased by Importer D from Producers A, B, and C and entered during the initial applicable one-year period. As all of the articles, in the aggregate, purchased by Importer D from the three producers and entered during the initial applicable one-year period satisfy the 50% value-content requirement, all of these articles are entitled to duty-free treatment under the HOPE Act, assuming all other applicable requirements are met.

With respect to Producer C, the apparel articles that must be considered in determining compliance with the 50% value-content requirement under the annual aggregation method are all those articles that are wholly assembled or knit-to-shape in Haiti by Producer C and entered in the initial applicable one-year period. In this scenario, all of the articles, in the aggregate, that are wholly assembled by Producer C and entered during the initial applicable one-year period (including the articles sold to Importer D) do not satisfy the 50% value-content requirement. However, the failure of Producer C to meet the value-content requirement under these circumstances should not and will not affect the duty-free status of the articles purchased by Importer D from Producer C since, as noted above, the cumulative total of all of the articles whose production is controlled by Importer D (an entity controlling production) meets the 50% value-content requirement. Therefore, the consequences of Producer C's failure to meet the 50% value-content requirement include the denial of duty-free treatment for all articles that are wholly assembled by Producer C and entered during the initial applicable one-year period, except for those articles sold by Producer C to Importer D. CBP is amending § 10.844(a)(4) in this final rule to clarify the circumstances under which this exception applies by adding a new paragraph (a)(4)(iii) to § 10.844, resulting in the re-designation of current paragraphs (a)(4)(iii) through (a)(4)(v) as paragraphs (a)(4)(iv) through (a)(4)(vi), respectively.

CBP notes that, pursuant to § 10.844(a)(4)(i)(C), an additional consequence of Producer C's failure to meet the value-content requirement in the initial applicable one-year period would be that articles wholly assembled by Producer C and entered during succeeding applicable one-year periods will be ineligible for duty-free treatment until the appropriate increased value-content requirement has been met, except to the extent the articles retroactively qualify for preference under § 10.845.

CBP agrees with the commenters that additional examples should be included in the HOPE Act implementing regulations to clarify the application of the annual aggregation method. Therefore, CBP is amending paragraph (a)(2)(iii) and new paragraph (a)(4)(iii) of § 10.844 by adding two examples (one in each paragraph) patterned after the two scenarios presented by the commenters.

8. *Comment:* Three commenters stated that the interim regulations (specifically, § 10.844(a)) are unclear regarding whether a producer or entity controlling production may elect to use the individual entry method during an applicable one-year period and then switch to the annual aggregation method for the following year. Assuming that a producer or entity controlling production may use the individual entry method during the first applicable one-year period and then elect to use the annual aggregation method during the second applicable one-year period, two of these commenters asked whether it would be necessary to submit a declaration of compliance following the end of the first applicable one-year period. One commenter stated that § 10.844(a)(3) ''seems to imply'' that once an election is made to use the annual aggregation method, use of the individual entry method is foreclosed for any subsequent one-year period.

CBP's Response: There is nothing in the HOPE Act or the implementing interim regulations (including § 10.844(a)(3)) that would preclude a producer or entity controlling production from electing to use either the annual aggregation or individual entry method during one applicable one-year period and then switching to the other method during the subsequent one-year period. This assumes, of course, that all applicable requirements are met during the applicable one-year period preceding the period in which the switch is to be made. The underlying purpose of § 10.844(a)(3), as set forth in the interim rule, is to make it clear that, regardless of the method chosen for a particular period, that method must be used for all articles of a producer or entity controlling production during that period. As recommended by these commenters, CBP is amending § 10.844(a)(3) in this final rule document to clarify that a producer or entity controlling production may elect to use the individual entry or annual aggregation method in any applicable one-year period and then switch to the other method during the next one-year period.

In response to the question posed by two of the commenters, CBP believes that a declaration of compliance must be submitted following the end of any applicable one-year period in which the individual entry method is used if an election is made to use the annual aggregation method during the next applicable one-year period. As section 203A(b)(1)(B)(iv)(II) of the CBERA and § 10.844(a)(2)(ii) of the interim regulations make clear, an election to use the annual aggregation method in the second, third, fourth, or fifth applicable one-year period is conditioned on compliance with the applicable value-content requirement by all apparel articles of the producer or entity controlling production, in the aggregate, that are entered during the previous applicable one-year period. Thus, an importer may enter articles under the annual aggregation method in each of the second through fifth applicable one-year periods only if it can assure CBP through the submission of a declaration of compliance, as set forth in § 10.848, that the aggregate total of all apparel articles of the producer or entity controlling production met the applicable value-content requirement during the previous applicable one-year period. This is true even if all articles of the producer or entity controlling production were entered under the individual entry method during that previous applicable one-year period. CBP is amending § 10.848 in this final rule document to specifically address this issue.

9. *Comment:* Five commenters noted that § 10.844(a)(2)(iii)(C) of the interim regulations permits apparel articles receiving preferential tariff treatment under any provision of law other than the HOPE Act to be included in the annual aggregation calculation (at the election of the producer or entity controlling production). However, these commenters objected to the requirement in the regulation that the apparel articles must be ''wholly assembled'' in Haiti. According to the commenters, this is an impermissible expansion of the statutory language ''that sets another hurdle for Haitian goods for qualification of merchandise otherwise

produced in Haiti.'' Several of these commenters stated that this additional requirement seems excessive considering that these other preference programs (*e.g.*, CBTPA) do not require ''such a wholly assembled definition.''

CBP's Response: CBP notes initially that § 10.844(a)(2)(iii) has been amended in this final rule document to conform to an amendment to section 213A(b)(1)(B)(iv)(IV) of the CBERA by the HOPE II Act (deleting specific references to woven apparel articles and brassieres). However, amended § 10.844(a)(2)(iii) continues to require that the referenced apparel articles must be ''wholly assembled or knit-to-shape'' in Haiti.

CBP maintains that if the statute is read as a whole, the rationale for the ''wholly assembled or knit-to-shape'' requirement in § 10.844(a)(2)(iii) becomes clear. Annual aggregation applies to apparel articles of a producer or entity controlling production that enter during an applicable one-year period and is calculated by aggregating certain costs incurred with respect to all apparel articles of that producer or entity controlling production that are wholly assembled, or knit-to-shape, in Haiti and entered during the first year of the program or, for subsequent years, entered during the preceding year. *See* section 213A(b)(1)(B)(iv)(I) and (II) of the CBERA. Paragraph (IV) of section 213A(b)(1)(B)(iv) clarifies that the universe of apparel articles wholly assembled, or knit-to-shape, in Haiti to be included in the calculation of all apparel articles so produced in Haiti and entered during the year under consideration is not to include entries of apparel articles receiving preferential treatment under any provision of law other than section 213A(b)(1) or entries of apparel articles subject to the Normal Trade Relations ''general'' rate of duty, unless the producer or entity controlling production elects to include such entries. In other words, the phrase ''all apparel articles'' for purposes of section 213A(b)(1)(B)(iv)(I) and (II) is defined in section 213A(b)(1)(B)(iv)(IV). Defining the scope of ''all apparel articles'' does not relieve the articles from the requirements of section 213A(b)(1)(B)(iv)(I) and (II) that they be wholly assembled, or knit-to-shape in Haiti. The commenters are mistaken in their belief that CBP is expanding the statutory language to construct a ''hurdle'' for Haitian goods. CBP is merely reading the statute as a whole and recognizes that section 213A(b)(1)(B)(iv)(IV) serves to clarify Congressional intent regarding the scope of the words ''all apparel articles'', as used in section 213A(b)(1)(B)(iv)(I) and (II).

10. *Comment:* One commenter stated that the final regulations should make it clear that an entity controlling production and a manufacturer will not both be penalized if one of the parties fails to meet its annual aggregation percentage requirement and they are not exclusively producing for or importing from each other. Another commenter indicated that the failure of a producer (electing to use the annual aggregation method) to meet the applicable value-content requirement in a particular year should not be ''transferred'' to U.S. importers who take appropriate steps to ensure that their imported goods satisfy the value-content requirement.

CBP's Response: CBP has previously addressed in this comment discussion the circumstances under which the failure of an entity controlling production and/or a producer to meet the applicable value-content requirement under the annual aggregation method in a particular one-year period will affect the duty-free status of the apparel articles that they control or produce in situations in which they do not exclusively produce for or import from each other. As previously indicated, CBP is amending § 10.844(a)(4) in this final rule to clarify this matter.

CBP disagrees with the second commenter's assertion that the failure of a producer to meet the applicable value-content requirement under the annual aggregation method should not be ''transferred'' to U.S. importers who take appropriate steps to ensure that their imported goods satisfy the value-content requirement. All U.S. importers of apparel articles for which preferential tariff treatment is sought under the HOPE Act are required to exercise reasonable care to ensure that those articles are in fact entitled to such treatment. Thus, if a producer fails to meet the applicable value-content percentage in a particular one-year period, all importers who purchase apparel articles from that producer will be subject to rate advances due to the failure of the articles to satisfy the applicable HOPE Act requirements.

11. *Comment:* One commenter stated that it was unable to find any Congressional intent or statutory language that supports the requirement in § 10.844(c) of the interim regulations that there be an ''irreversible election'' to use the annual aggregation method. It was this commenter's understanding, as the HOPE I Act bill was being drafted, that a producer or entity controlling production could choose to use the aggregate or individual entry method in such a way and at such time as to maximize the duty-free benefit of the program. In addition, this commenter complained that the interim regulations provide no information as to how such an election is to be made so that it may take legal effect, and that the regulations do not make clear that CBTPA-type operations count toward the aggregate value-content requirement, assuming the apparel product is wholly assembled in Haiti.

CBP's Response: CBP disagrees with the commenter's assertion that there is no statutory authority for the requirement in § 10.844(c) that a producer or entity controlling production that elects to use the annual aggregation method during an applicable one-year period must continue to use that method for all its qualifying apparel articles throughout that period. Section 203A(b)(1)(B)(iv) of the CBERA provides that the use of the annual aggregation method in an applicable one-year period involves aggregating costs with respect to ''all apparel articles'' of the producer or entity controlling production that are entered during the applicable one-year period (initial period for an election in that period and preceding period for an election in subsequent periods). Consequently, allowing a producer or entity controlling production to elect to use the annual aggregation method for some of its apparel articles that are entered during an applicable one-year period and use the individual entry method for other articles entered during the same period would be inconsistent with the clear wording of the statute.

Regarding the other points made by the commenter, paragraphs (a)(2) and (b) of § 10.847 set forth the procedure for filing a claim for duty-free treatment for apparel articles described in § 10.843(a) when an election has been made by the producer or entity controlling production (through the use of a certification to that effect) to use the annual aggregation method. Section 10.844(a)(2)(iii) addresses an election to include in the annual aggregation calculation an entry of apparel articles receiving duty-free treatment under another preference program (such as the CBTPA), provided the articles are wholly assembled or knit-to-shape in Haiti.

Increased Value-Content Percentage

12. *Comment:* Three commenters objected to CBP's interpretation and application of the statutory increased value-content percentage requirement (*see* section 213A(b)(1)(B)(vi)(II) of the CBERA), as reflected in § 10.844(a)(4)(iii) of the interim

regulations (now § 10.844(a)(4)(iv)) and Example 1 under § 10.844(a)(4)(iv) (now § 10.844(a)(4)(v)). These commenters contend that the words ''plus ten percent'' in the statute mean that ten percent is to be applied against the applicable percentage to arrive at the increased value-content percentage (*e.g.*, 50% + 10% of 50%= 55%). According to these commenters, CBP has adopted a more strict (and, in fact, an erroneous) interpretation of the words ''plus ten percent'' by actually adding 10 percentage points to the applicable percentage (*e.g.*, 50% + 10%= 60%) in calculating the increased value-content percentage. Another commenter alleges, without further elaboration, that § 10.844(a)(4)(iii) (now § 10.844(a)(4)(iv)) is inconsistent in delineating the increased value-content percentages.

CBP's Response: CBP disagrees with the commenters' interpretation of section 213A(b)(1)(B)(vi)(II) of the CBERA, which sets forth the increased-value content percentage requirement. This provision states, in pertinent part, that if a producer or entity controlling production is not in compliance with the statutory requirements in an applicable one-year period, then apparel articles of that producer or entity controlling production shall be ineligible for preferential treatment during any succeeding period until the sum of the relevant costs ''is not less than the applicable percentage under clause (v)(I), plus 10 percent, of the aggregate declared customs value of all apparel articles of that producer or entity controlling production * * *.'' The words ''plus 10 percent'' are set off by commas and clearly refer to the words ''the aggregate declared customs value''—not ''the applicable percentage.'' Therefore, in CBP's opinion, § 10.844(a)(4)(iii) (now § 10.844(a)(4)(iv)) and Example 1 under § 10.844(a)(4)(iv) (now § 10.844(a)(4)(v)) are correct in requiring that the increased value content percentage be determined by adding 10 percent to the applicable percentage—not by applying 10 percent against the applicable percentage and then adding that result to the applicable percentage. Had Congress intended the latter meaning, CBP believes that Congress would have used statutory language to clearly accomplish that intent.

In regard to the assertion that § 10.844(a)(4)(iii) (now § 10.844(a)(4)(iv)) is ''inconsistent in delineating the increased value-content percentages'', CBP cannot discern any inconsistency in this provision, which CBP notes closely follows the statutory language in § 213A(b)(1)(B)(vi)(II) of the CBERA.

New Producer or Entity Controlling Production

13. *Comment:* Five commenters disagreed with the requirement in § 10.844(a)(4)(iv) of the interim regulations (now § 10.844(a)(4)(v)) that a new producer or entity controlling production (one who did not participate in the program during the preceding applicable one-year period) that elects to use the annual aggregation method must first meet an increased value-content percentage during the first year of participation before beginning to receive duty-free treatment during the next applicable one-year period. These commenters maintained that this requirement unjustifiably and unfairly penalizes new entrants to the program and is inconsistent with the language and goals of the HOPE Act.

CBP's Response: CBP believes it is constrained by the statutory language to require that new entrants to the program (in the second through fifth applicable one-year periods) that elect to use the annual aggregation method must first meet an increased value-content percentage during the first year of participation before becoming eligible for preference during the next applicable one-year period. As noted previously in this comment discussion, section 213A(b)(1)(B)(vi)(II) of the CBERA conditions use of the annual aggregation method during each of the second through fifth applicable one-year periods on compliance with the applicable value-content requirement by all qualifying apparel articles of the producer or entity controlling production that are entered during the previous applicable one-year period. A new entrant obviously cannot meet the applicable value-content requirement during the previous applicable one-year period if there was no production (and therefore no entries) during that previous year. As a result of a new entrant's inability to meet the applicable value-content requirement during the previous year, section 213A(b)(1)(B)(vi)(II) of the CBERA requires that apparel articles of the producer or entity controlling production be treated as ineligible for preferential treatment until the year after those articles meet the increased value-content percentage requirement. The statute sets forth no exception to the increased value-content percentage requirement for articles of a new producer or entity controlling production.

CBP notes that in the context of somewhat similar statutory language in section 213(b)(2)(A)(iv)(II) and (III) of the CBERA (19 U.S.C. 2703(b)(2)(A)(iv)(II) and (III)), relating to the preferential treatment of brassieres from designated Caribbean Basin countries under the United States-Caribbean Basin Trade Partnership Act (CBTPA), CBP determined that a new producer or entity controlling production must first establish compliance with a higher value-content percentage (85% rather than 75%) as a prerequisite to receiving preferential treatment (*see* § 10.228(b)(2)(i)(G) and Example 7 under § 10.228(b)(2)(ii) of the CBP regulations (19 CFR 10.228(b)(2)(i)(G) and 10.228(b)(2)(ii))). Thus, § 10.844(a)(4)(iv) of the HOPE I Act implementing regulations (now § 10.844(a)(4)(v)) and § 10.228(b)(2)(i)(G) of the CBTPA implementing regulations are consistent in their treatment of new producers and entities controlling production under those programs.

14. *Comment:* One commenter stated that in the final regulations, § 10.844(a)(4)(iv) (now § 10.844(a)(4)(v)) should clarify that a new producer or entity controlling production that elects to use the individual entry method is not subject to an increased value-content percentage requirement.

CBP's Response: Although Example 2 under § 10.844(a)(4)(iv) (now § 10.844(a)(4)(v)) indirectly addresses this issue, CBP agrees with the commenter that the text of the regulation itself should be amended to reflect that apparel articles of a new producer or entity controlling production electing to use the individual entry method are not subject to the requirement of first meeting the increased value-content percentage as a prerequisite to receiving preferential treatment during the first year of participation in the program or in succeeding years. Therefore, § 10.844(a)(4)(iv) (now § 10.844(a)(4)(v)) is being amended in this final rule document to clarify this point.

Eligible Countries

15. *Comment:* Four commenters suggested that § 10.844(c)(3) of the interim regulations should specify the designated beneficiary countries (under the Andean Trade Preference Act, African Growth and Opportunity Act, and Caribbean Basin Trade Partnership Act) that qualify as ''eligible countries'' for purposes of the HOPE program, rather than merely referring the reader to the HTSUS General Notes under which the designated beneficiary countries are listed. In addition, these commenters stated that this regulation should clarify whether qualifying inputs from these designated beneficiary

countries will continue to be eligible under the HOPE program should these other preference programs subsequently expire.

CBP's Response: Section 213A(b)(1)(B)(iii) of the CBERA specifies that certain material and processing costs incurred in the following countries may be counted toward meeting the applicable value-content percentage requirement: (1) The United States; (2) any country that is a party to a free trade agreement with the United States that is in effect on the date of the enactment of the HOPE Act, or that enters into force thereafter; (3) any country designated as a beneficiary country under the CBTPA; (4) any country designated as a beneficiary country under the African Growth and Opportunity Act (AGOA); and (5) any country designated as a beneficiary country under the Andean Trade Preference Act (ATPA).

Only the countries referenced in (2) above (parties to a free trade agreement in effect as of the date of enactment of the HOPE Act) are subject to a specific effective date insofar as determining whether qualifying material or processing costs from such countries may be counted under the HOPE Act. As the countries referenced in (3), (4), and (5) above (relating to CBTPA, AGOA, and ATPA) are not subject to an effective date, CBP believes it was the intent of Congress that a determination regarding a country's status as a beneficiary country under these programs should be made at the time a claim for preferential tariff treatment is filed under the HOPE Act. For example, if a country loses its designated beneficiary country status under one of these programs as of July 1, 2008, material and processing costs incurred in that country may no longer be counted toward meeting the applicable HOPE Act value-content requirement effective for apparel articles entered on or after that date.

With respect to these commenters' suggestion that § 10.844(c)(3) of the HOPE I Act implementing regulations should specify the designated beneficiary countries under the CBTPA, AGOA, and ATPA, CBP prefers not to identify each of these countries in this regulatory provision as changes in their status as beneficiary countries would require repeated amendments to the regulation. CBP believes that the regulation's cross-reference to the listings of designated beneficiary countries in General Notes 11 (ATPA), 16 (AGOA), and 17 (CBTPA) of the HTSUS is sufficient as these listings are easily accessible at *http://www.usitc.gov/tata/hts/bychapter/0800gntoc.htm.*

Direct Costs of Processing Operations

16. *Comment:* One commenter stated that § 10.844(e) of the interim regulations should be amended to include as a ''direct cost of processing operation'' the cost of packaging materials (such as labels, hangtags, and bags) if such materials are required to be included with the article. This commenter also asked that ''direct costs of processing operations'' include the cost of any post production procedures, such as mending or finishing that may be needed to present the finished article for sale. According to this commenter, the definition of the term ''wholly assembled'' in § 10.842(p) of the interim regulations could be interpreted as precluding such operations, contrary to the intent of the statute.

CBP's Response: Because the HOPE Act includes no definition of the words ''direct costs of processing operations'', CBP based the definition set forth in § 10.844(e) of the interim regulations on the definition of the same term found in section 213(a)(3) of the CBERA (19 U.S.C. 2703(a)(3)) and § 10.197 of the CBP's CBERA implementing regulations (19 CFR 10.197). CBP believes that determinations regarding whether specific costs not mentioned in § 10.844(e), such as those referenced by the commenter, qualify as ''direct cost of processing operations'' should best be made on a case-by-case basis pursuant to CBP's administrative rulings program (see part 177 of the CBP regulations (19 CFR part 177)).

Imported Directly

17. *Comment:* Six commenters maintained that § 10.846 of the interim regulations sets forth an unnecessarily strict construction of the statutory ''imported directly'' requirement, thereby placing untenable restrictions on the process of shipping goods to the United States via intermediary countries, contrary to the intent of Congress. Five of these commenters noted that the ''imported directly'' rules set forth in § 10.846 are similar to rules applied to certain other preference programs, and that interpretative rulings issued by CBP have concluded that the prohibition relating to the ''entry into commerce'' of an intermediate country means that the goods may not be ''manipulated'' in that country. These commenters stated that, by so doing, CBP has not permitted operations (other than loading or unloading or other activities necessary to preserve the goods in good condition) even in a bonded warehouse and even where ''the invoices, bills of lading, and other shipping documents show the United States as the final destination.'' According to these commenters, this is an incorrect interpretation under the other preference programs and would be particularly so under the HOPE program.

CBP's Response: Although the HOPE I Act included no definition of the term ''imported directly'', the HOPE II Act included a definition of ''imported directly from Haiti or the Dominican Republic'' (see section 213A(a)(3) of the CBERA). Section 10.846 has been amended to conform to this statutory definition.

With respect to the concerns expressed by some of the commenters regarding the correctness of certain administrative rulings issued by CBP interpreting the ''imported directly'' requirement under the CBERA and other preference programs, CBP does not believe it is appropriate to address these concerns in the context of the HOPE Act implementing regulations. In CBP's opinion, these concerns should properly be addressed through the CBP administrative rulings process (see part 177 of the CBP regulations (19 CFR part 177)).

18. *Comment:* Three commenters urged that CBP broaden the ''imported directly'' concept, at least with respect to apparel articles subject to value-added provisions, to permit passage through, and permit operations in, the territory of other HOPE ''eligible countries''(as enumerated in § 10.844(a)), as long as the origin-conferring operations are performed in Haiti. These commenters indicated that Congress's intent in setting up this program was to create linkages between Haiti and other HOPE ''eligible countries.'' Two of these commenters stated that, alternatively, CBP should permit HOPE eligible goods to be exported from the Dominican Republic because of its geographic proximity to, and existing co-production agreements with, Haiti. As an example, one commenter stated that § 10.846 should not be interpreted as prohibiting activities such as screen printing, repairing, and embellishing articles, as well as ''warehouse/pack/sticker'' activities in the Dominican Republic.

CBP's Response: The HOPE II Act amended the HOPE program to allow eligible textile and apparel articles to be imported directly from Haiti or the Dominican Republic. CBP believes that this change, along with the statutory definition of ''wholly assembled in Haiti'' included in the HOPE II Act, addresses these commenters' concerns.

Declaration of Compliance

19. *Comment:* Four commenters complained that the declaration of compliance requirement in § 10.848 of the interim regulations is overly restrictive in that it requires that value information be provided with line number and line value specificity. These commenters allege that this is unduly burdensome for the producer when it is filing its own declaration of compliance as the entity controlling production.

CBP's Response: Under the HOPE Act preference program relating to certain apparel articles, meeting the applicable value-content requirement is a prerequisite to qualifying for duty-free treatment. For CBP to be able to properly verify that a producer or entity controlling production has met the applicable value-content requirement when the annual aggregation method is used, it is critical that CBP have access to pertinent value information with respect to all affected entries (and all affected apparel articles covered by those entries) that are filed during the applicable one-year period. Without the information required by the declaration of compliance (*e.g.*, entry numbers, line number and value), CBP would be unable to determine, on the basis of submitted documentation, that an annual aggregation calculation satisfies the applicable value-content requirement. If a producer or entity controlling production finds that providing the information required by the declaration of compliance is unduly burdensome, the entry-by-entry method may be used for purposes of satisfying the value-content requirement.

20. *Comment:* One commenter stated that the requirement in § 10.848 that the declaration of compliance be filed with CBP within 30 days of the end of the applicable one-year period is overly restrictive. This commenter maintained that it will be extremely difficult to obtain actual values within the 30-day time period with respect to entries subject to reconciliation, especially when a fiscal year fails to coincide with the end of the applicable one-year period. Therefore, this commenter asked that § 10.848 include an exception or provisional treatment for filing the declaration of compliance for entries that are subject to reconciliation.

CBP's Response: CBP recognizes that there may be situations in which an importer may not have access to actual values within the 30-day period required for submission of the declaration of compliance in § 10.848(a) of the HOPE Act implementing regulations. In these situations, the declaration of compliance filed with CBP during the 30-day period may reflect estimated values until more accurate value-content figures are known, at which time the importer may amend the declaration. Again, if a producer or entity controlling production finds that providing the information necessary for the submission of a declaration of compliance is unduly burdensome, the entry-by-entry method is available as an alternative to the annual aggregation method.

21. *Comment:* One commenter was troubled that § 10.848 places the responsibility for submitting the declaration of compliance on the importer, considering that compliance is measured at the level of the producer or entity controlling production. This commenter indicated that it could envision a situation in which an importer is required to certify compliance for a producer ''when the producer's total production is not compliant but when the product the importer bought from the producer is.'' This commenter inquired regarding what CBP would do if the producer elected to use the individual entry method but the importer used the annual aggregation method, or vice-versa. The commenter urged that CBP shift the responsibility for preparing and filing the declaration of compliance on the producer or entity controlling production ''so the importer has greater certainty he is relying upon a known quantity.''

CBP's Response: The commenter is correct that, under the HOPE Act, compliance with the requirements for preferential treatment for apparel articles is addressed in the context of the producer or entity controlling production. However, as is the case with respect to all preferential tariff treatment programs, it is the responsibility of the U.S. importer of the articles for which preference is sought to file the entry with CBP and to make the claim for duty-free treatment under the HOPE Act (see § 10.847 of the HOPE Act implementing regulations). Consequently, it is the importer's responsibility to file the declaration of compliance with CBP under the circumstances set forth in § 10.848 of the implementing regulations.

In regard to the situation envisioned by the commenter in which a producer's total production is not in compliance with the applicable value-content requirement although the portion purchased by the importer is, § 10.848(c)(2)(v) requires that the declaration of compliance include ''[t]he value-content percentage that was met during the applicable one-year period with respect to each producer or entity controlling production.'' Thus, the importer must obtain and provide to CBP information regarding the value-content percentage that was met with respect to all apparel articles of each producer or entity controlling production that were entered during the applicable one-year period—not just the articles purchased by the importer.

In answer to the commenter's question concerning what CBP would do if the producer elects to use one method for purposes of meeting the value-content requirement but the importer uses the other method, § 10.847(b) of the interim regulations was drafted to prevent such an occurrence. Under this provision, an importer may enter articles using the annual aggregation method only if the importer is in possession of a copy of a certification by the producer or entity controlling production setting forth its election to use the annual aggregation method. In the absence of such a certification, the importer is required to enter the articles using the individual entry method.

22. *Comment:* One commenter expressed concern that, as currently written, §§ 10.848 and 10.849 would impose upon a customs broker serving as nominal importer of record the responsibility for certifying the eligibility of articles for duty-free treatment under the HOPE Act. According to this commenter, a broker acting as nominal importer of record would be unable to certify or verify the accuracy of the information provided. The commenter stated that the actual importer is the party most knowledgeable regarding the facts and circumstances of the importation and, as such, should be solely responsible for making HOPE Act claims and submitting the declaration of compliance. The commenter recommended that CBP clarify the regulations to distinguish between a broker serving as a nominal importer of record in an import transaction and the actual importer.

CBP's Response: As indicated previously in this comment discussion, it is the responsibility of the importer of record of articles for which preference is sought under the HOPE Act to obtain sufficient information concerning the transaction to know whether the articles meet all applicable requirements and, therefore, are entitled to duty-free treatment. If the importer does not possess that information, no claim for preference under the HOPE Act should be made. In a situation in which a broker serves as nominal importer of

record, the broker should either obtain all necessary information from the consignee or other parties regarding whether the articles qualify for preference under the HOPE Act or insist that the owner or producer of the goods act as importer of record for the transaction and be the party responsible for certifying that the articles qualify for preference.

Conclusion

Accordingly, based on the analysis of comments received as set forth above and the additional considerations discussed above, CBP is adopting as a final rule the interim regulations published as CBP Dec. 07–43 with certain changes as discussed above and as set forth below.

Inapplicability of Delayed Effective Date Requirement

Section 553(d)(3) of the Administrative Procedure Act (''APA'') (5 U.S.C. 553(d)(3)), permits agencies to make a rule effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, or when the agency finds that good cause exists for dispensing with a delayed effective date. As these regulations implement the tariff preference provisions of the HOPE Act and thus grant an exemption from normal duty rates for qualifying articles, a delayed effective date is not required. Moreover, for this reason, CBP finds that good cause exists to make these regulations effective without a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993). In addition, because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations have previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0129.

The collections of information in these regulations are in § 10.847 (claim for duty-free treatment) and §§ 10.844(a)(4)(vi) and 10.848 (declaration of compliance). This information is required in connection with certain claims for duty-free treatment under the HOPE Act and will be used by CBP to determine eligibility for preferential tariff treatment under that Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 39.2 hours per respondent or record keeper. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Preference programs, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ Accordingly, the interim rule amending parts 10, 163, and 178 of the CBP regulations (19 CFR parts 10, 163, and 178), which was published at 72 FR 34365 on June 22, 2007, is adopted as a final rule with certain changes as discussed above and set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10, CBP regulations, and the specific authority for subpart O (§§ 10.841 through 10.850) continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.841 through 10.850 also issued under 19 U.S.C. 2703A.

■ 2. The subpart O heading is amended by removing the words ''Act of 2006'' and adding in its place the words ''Acts of 2006 and 2008''.

■ 3. Section 10.841 is revised to read as follows:

§ 10.841 Applicability.

Title V of Public Law 109–432, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE I Act), amended the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) by adding a new section 213A (19 U.S.C. 2703A) to authorize the President to extend additional trade benefits to Haiti. Part I, Subtitle D, Title XV of Public Law 110–234, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act) amended certain provisions within section 213A. Section 213A of the CBERA provides for the duty-free treatment of certain apparel articles and certain wiring sets from Haiti. The provisions of this subpart set forth the legal requirements and procedures that apply for purposes of obtaining duty-free treatment pursuant to CBERA section 213A.

■ 4. In § 10.842, paragraph (p) is revised to read as follows:

§ 10.842 Definitions.

* * * * *

(p) *Wholly assembled in Haiti.* ''Wholly assembled in Haiti'' means that all components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in Haiti. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, and pockets), will not affect the determination of whether a good is ''wholly assembled in Haiti''.

* * * * *

■ 5. Section 10.843 is amended by revising the introductory text and paragraphs (b) through (d), and adding paragraphs (e) through (k) to read as follows:

§ 10.843 Articles eligible for duty-free treatment.

The duty-free treatment referred to in § 10.841 of this subpart applies to the articles described in paragraphs (a) through (j) of this section that are imported directly from Haiti or the Dominican Republic into the customs territory of the United States and to the articles described in paragraph (k) of this section that are imported directly from Haiti into the customs territory of the United States.

* * * * *

(b) *Certain woven apparel articles.* Apparel articles classifiable in Chapter 62 of the HTSUS that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to the applicable quantitative limits set forth in U.S. Note 6(h), Subchapter XX, Chapter 98, HTSUS.

(c) *Brassieres.* Apparel articles classifiable in subheading 6212.10 of the HTSUS that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(d) *Certain knit apparel articles*—(1) *General.* Apparel articles classifiable in Chapter 61 of the HTSUS (other than those described in paragraph (d)(2) of this section) that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to the applicable quantitative limits set forth in U.S. Note 6(j), Subchapter XX, Chapter 98, HTSUS.

(2) *Exclusions.* Duty-free treatment for the articles described in paragraph (d)(1) of this section will not apply to the following:

(i) The following apparel articles of cotton, for men or boys, that are classifiable in subheading 6109.10.00 of the HTSUS:

(A) All white T-shirts, with short hemmed sleeves and hemmed bottom, with crew or round neckline or with V-neck and with a mitered seam at the center of the V, and without pockets, trim, or embroidery;

(B) All white singlets, without pockets, trim, or embroidery; and

(C) Other T-shirts, but not including thermal undershirts;

(ii) T-shirts for men or boys that are classifiable in subheading 6109.90.10 of the HTSUS;

(iii) The following apparel articles of cotton, for men or boys, that are classifiable in subheading 6110.20.20 of the HTSUS:

(A) Sweatshirts; and

(B) Pullovers, other than sweaters, vests, or garments imported as part of playsuits; or

(iv) Sweatshirts for men or boys, of man-made fibers and containing less than 65 percent by weight of man-made fibers, that are classifiable in subheading 6110.30.30 of the HTSUS.

(e) *Other apparel articles.* Any of the following apparel articles that is wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(1) Any apparel article that is of a type listed in chapter rule 3, 4, or 5 for chapter 61 of the HTSUS (as such chapter rules are contained in section A of the Annex to Presidential Proclamation 8213 of December 20, 2007) as being excluded from the scope of such chapter rule, when such chapter rule is applied to determine whether an apparel article is an originating good for purposes of General Note 29(n), HTSUS, except that, for purposes of this provision, reference in such chapter rules to subheading 6104.12.00 of the HTSUS is deemed to refer to subheading 6104.19.60 of the HTSUS; or

(2) Any apparel article (other than articles to which paragraph (c) of this section applies (brassieres)) that is of a type listed in chapter rule 3(a), 4(a), or 5(a) for chapter 62 of the HTSUS, as such chapter rules are contained in paragraph 9 of section A of the Annex to Presidential Proclamation 8213 of December 20, 2007.

(f) *Luggage and similar items.* Articles classifiable in subheading 4202.12, 4202.22, 4202.32, or 4202.92 of the HTSUS that are wholly assembled in Haiti, without regard to the source of the fabric, components, or materials from which the article is made.

(g) *Headgear.* Articles classifiable in heading 6501, 6502, or 6504, or subheading 6505.90 of the HTSUS that are wholly assembled, knit-to-shape, or formed in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(h) *Certain sleepwear.* Any of the following apparel articles that is wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(1) Pajama bottoms and other sleepwear for women and girls, of cotton, that are classifiable in subheading 6208.91.30, HTSUS, or of man-made fibers, that are classifiable in subheading 6208.92.00, HTSUS; or

(2) Pajama bottoms and other sleepwear for girls, of other textile materials, that are classifiable in subheading 6208.99.20, HTSUS.

(i) *Earned import allowance rule.* Apparel articles wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate issued by the Department of Commerce that reflects the amount of credits equal to the total square meter equivalents of such apparel articles, in accordance with the earned import allowance program established by the Secretary of Commerce pursuant to 19 U.S.C. 2703A(b)(4)(B).

(j) *Apparel articles of short supply materials.* Apparel articles that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabrics, fabric components, components knit-to-shape, or yarns from which the article is made, if the fabrics, fabric components, components knit-to-shape, or yarns comprising the component that determines the tariff classification of the article are of any of the following:

(1) Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA); or

(2) Fabrics or yarns, to the extent that such fabrics or yarns are designated as not being available in commercial quantities for purposes of:

(i) Section 213(b)(2)(A)(v) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v));

(ii) Section 112(b)(5) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5));

(iii) Section 204(b)(3)(B)(i)(III) or 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(i)(II) or 3203(b)(3)(B)(ii)); or

(iv) Any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential tariff treatment is made under § 10.847 of this subpart.

(k) *Wiring sets.* Any article classifiable in subheading 8544.30.00 of the HTSUS, as in effect on December 20, 2006, that is the product or manufacture of Haiti, provided the article satisfies the value-content requirement set forth in § 10.844(b) of this subpart. For purposes of this paragraph, the term ''product or manufacture of Haiti'' refers to an article that is either:

(1) Wholly the growth, product, or manufacture of Haiti; or

(2) A new or different article of commerce that has been grown, produced, or manufactured in Haiti.

■ 6. In § 10.844:

■ a. Paragraphs (a)(2)(iii), (a)(3), and the introductory text of paragraphs (a)(4)(i) and (a)(4)(ii) are revised;

■ b. Paragraphs (a)(4)(iii), (a)(4)(iv), and (a)(4)(v) are re-designated as paragraphs (a)(4)(iv), (a)(4)(v), and (a)(4)(vi), respectively, and a new paragraph (a)(4)(iii) is added;

■ c. The introductory text of re-designated paragraph (a)(4)(v) is revised;

■ d. Re-designated paragraph (a)(4)(vi) is amended by removing the reference to ''(a)(4)(iii)'' and adding in its place ''(a)(4)(iv)'', and by removing the reference to ''(a)(4)(iv)'' and adding in its place ''(a)(4)(v)'';

■ e. Paragraph (a)(5)(ii)(D) is amended by removing the words ''under the Bipartisan Trade Promotion Authority Act of 2002'' and adding in their place the words ''with respect to the United States''; and

■ f. Paragraph (c)(2) is amended by removing the words ''under the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3801 *et seq.*)'' and adding in their place the word ''thereafter''.

The revisions read as follows:

§ 10.844 Value-content requirement.

(a) * * *

(2) * * *

(iii) *Exclusions from annual aggregation calculation.* The entry of an apparel article that is wholly assembled or knit-to-shape in Haiti and is receiving preferential tariff treatment under any provision of law other than section 213A(b)(1) of the CBERA (19 U.S.C. 2703A(b)(1)) or is subject to the ''General'' subcolumn of column 1 of the HTSUS will only be included in an annual aggregation under paragraph (a)(2)(i) or (a)(2)(ii) of this section if the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entry in the aggregation.

Example. A Haitian producer elects to use the annual aggregation method in the initial applicable one-year period, and also elects to include in the aggregation calculation an entry of apparel articles receiving preferential tariff treatment under another preference program. The producer ships to the United States four shipments during the initial applicable one-year period and all are entered during that period. The first shipment of apparel (qualifying for and receiving preference under the Caribbean Basin Trade Partnership Act (CBTPA)) has an appraised value of $100,000 and meets a value-content percentage (under § 10.844(a) of this section) of 80%. The second shipment of apparel is wholly assembled in Haiti, has an appraised value of $100,000, and meets a value-content percentage of 40%. The third shipment is wholly assembled in Haiti, has an appraised value of $50,000, and meets a value-content percentage of 0%. The last shipment is wholly assembled in Haiti, has an appraised value of $20,000, and meets a value-content requirement of 80%. Taken together, the four shipments have an appraised value of $270,000 and meet a value-content percentage of 50.4%. The apparel articles shipped to the United States in the last three shipments would qualify for duty-free treatment under section 213A(b)(1) of the CBERA and § 10.843(a) of this subpart as the applicable value-content requirement for the initial applicable one-year period (50 %) is satisfied. This conclusion assumes that: The CBTPA-eligible apparel articles in the first shipment (that were included in the annual aggregation calculation at the election of the producer) were wholly assembled or knit-to-shape in Haiti, as required in § 10.844(a)(2)(iii) of this section; and the articles in the last three shipments that were wholly assembled in Haiti satisfy all other applicable requirements set forth in this subpart.

(3) *Election to use the annual aggregation method for an applicable one-year period.* A producer or entity controlling production may elect to use the individual entry or annual aggregation method in any applicable one-year period and then elect to use the other method during the subsequent applicable one-year period, provided that all applicable requirements are met during the applicable one-year period preceding the period in which the switch is made. If a producer or entity controlling production using the individual entry method in an applicable one-year period elects to use the annual aggregation method during the subsequent applicable one-year period, the declaration of compliance described in § 10.848 of this subpart must be submitted to CBP within 30 days following the end of the applicable one-year period in which the individual entry method was used.

(4) *Failure to meet applicable requirements*—(i) *Initial applicable one-year period.* Except as provided in paragraph (a)(4)(iii) of this section, if CBP determines that apparel articles of a producer or entity controlling production that are entered as articles described in § 10.843(a) of this subpart during the initial applicable one-year period have not met the requirements of § 10.843(a) of this subpart or the applicable value-content requirement set forth in paragraph (a)(1) of this section, then:

* * * * *

(ii) *Other applicable one-year periods.* Except as provided in paragraph (a)(4)(iii) of this section, if CBP determines that apparel articles of a producer or entity controlling production that are entered as articles described in § 10.843(a) of this subpart during any applicable one-year period following the initial applicable one-year period have not met the requirements of § 10.843(a) or the applicable value-content requirement set forth in paragraph (a) of this section, then:

* * * * *

(iii) *Entity controlling production of apparel articles of a producer also producing for its own account.* Where an entity controlling production controls the production of apparel articles, as described in § 10.843(a) of this subpart, of a producer that also produces for its own account, the failure of apparel articles of that producer to meet the requirements of § 10.843(a) of this subpart or the applicable value-content requirement set forth in paragraph (a) of this section in an applicable one-year period, either under the annual aggregation method or the individual entry method, will not affect the eligibility for duty-free treatment under § 10.843(a) of this subpart of those apparel articles of that producer which are part of a claim for such treatment made on behalf of the entity controlling production.

Example. Importer D, an entity controlling production, purchases apparel articles that meet the description in § 10.843(a) of this subpart from Haitian Producers A, B, and C and enters those articles during the initial applicable one-year period. Importer D elects to use the annual aggregation method during that period. The three producers also produce apparel for other U.S. importers and each producer elects to use the annual aggregation method. The apparel articles

purchased by Importer D from the three producers and entered during the initial applicable one-year period meet a value-content percentage of 51.7%. However, the value-content percentage met by all the apparel that is wholly assembled in Haiti by Producer C and entered (including the apparel imported by Importer D) during the initial applicable one-year period is 49%. As all of the articles, in the aggregate, purchased by Importer D from the three producers and entered during the initial applicable one-year period satisfy the applicable value-content requirement (50%), all of these articles are entitled to duty-free treatment under section 213A(b)(1) of the CBERA and § 10.843(a) of this subpart, assuming all other applicable requirements are met. The failure of Producer C to meet the 50% value-content requirement with respect to all of the articles that it wholly assembled in Haiti and entered during the initial applicable one-year period will not prevent duty-free status being claimed for the articles purchased by Importer D from Producer C. Therefore, the consequences of Producer C's failure to meet the 50% value-content requirement include the denial of preferential tariff treatment for all articles that are wholly assembled in Haiti by Producer C and entered during the initial applicable one-year period, *except for* those articles sold by Producer C to Importer D. An additional consequence of Producer C's failure to meet the value-content requirement in the initial applicable one-year period is that articles wholly assembled in Haiti by Producer C and entered during succeeding applicable one-year periods will be ineligible for duty-free treatment until the appropriate increased value-content requirement has been met (*see* § 10.844(a)(4)(i)(C) of this subpart), except to the extent the articles qualify for preference under § 10.845 of this subpart.

* * * * *

(v) *Articles of a new producer or entity controlling production.* Apparel articles of a new producer or entity controlling production electing to use the annual aggregation method for purposes of meeting the applicable value-content requirement must first meet the increased value-content percentage specified in paragraph (a)(4)(iv) of this section as a prerequisite to receiving duty-free treatment during a succeeding applicable one-year period. Apparel articles of a new producer or entity controlling production electing to use the individual entry method are not subject to the requirement of first meeting the increased value-content percentage as a prerequisite to receiving duty-free treatment during the first year of participation or in any succeeding applicable one-year period. For purposes of this paragraph, a ''new producer or entity controlling production'' is a producer or entity controlling production that did not produce or control production of articles that were entered as articles pursuant to § 10.843(a) of this subpart during the immediately preceding applicable one-year period.

* * * * *

■ 7. Section 10.846 is revised to read as follows:

§ 10.846 Imported directly.

(a) *Textile and apparel articles.* To be eligible for duty-free treatment under this subpart, textile and apparel articles described in paragraphs (a) through (j) of § 10.843 of this subpart must be imported directly from Haiti or the Dominican Republic into the customs territory of the United States. For purposes of this requirement, the words ''imported directly from Haiti or the Dominican Republic'' mean:

(1) Direct shipment from Haiti or the Dominican Republic to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti or the Dominican Republic to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(b) *Wiring sets.* To be eligible for duty-free treatment under this subpart, articles described in paragraph (k) of § 10.843 of this subpart must be imported directly from Haiti into the customs territory of the United States. For purposes of this requirement, the words ''imported directly from Haiti'' mean:

(1) Direct shipment from Haiti to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(c) *Documentary evidence.* An importer making a claim for duty-free treatment under § 10.847 of this subpart may be required to demonstrate, to CBP's satisfaction, that the articles were ''imported directly'' as that term is defined in paragraphs (a) and (b) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

■ 8. Section 10.847 is amended by revising paragraphs (a)(1) through (5) and adding paragraphs (a)(6) through (12) to read as follows:

§ 10.847 Filing of claim for duty-free treatment.

(a) * * *

(1) Subheading 9820.61.25 for apparel articles described in § 10.843(a) of this subpart for which the individual entry method is used for purposes of meeting the applicable value-content requirement set forth in § 10.844(a) of this subpart;

(2) Subheading 9820.61.30 for apparel articles described in § 10.843(a) of this subpart for which the annual aggregation method is used for purposes of meeting the applicable value-content requirement set forth in § 10.844(a) of this subpart;

(3) Subheading 9820.62.05 for apparel articles described in § 10.843(b) of this subpart;

(4) Subheading 9820.62.12 for brassieres described in § 10.843(c) of this subpart;

(5) Subheading 9820.61.35 for apparel articles described in § 10.843(d) of this subpart;

(6) Subheading 9820.61.40 for apparel articles described in § 10.843(e) of this subpart;

(7) Subheading 9820.42.05 for articles described in § 10.843(f) of this subpart;

(8) Subheading 9820.65.05 for articles described in § 10.843(g) of this subpart;

(9) Subheading 9820.62.20 for articles described in § 10.843(h) of this subpart;

(10) Subheading 9820.62.25 for articles described in § 10.843(i) of this subpart;

(11) Subheading 9820.62.30 for articles described in § 10.843(j) of this subpart; and

(12) Subheading 9820.85.44 for wiring sets described in § 10.843(k) of this subpart.

* * * * *

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

Approved: September 25, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–23008 Filed 9–29–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 6378]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule establishes regulatory exceptions to travel restrictions, established in the Tom Lantos Block Burmese JADE Act, that were put in place for Burmese nationals. The rule allows the Department to exempt certain Burmese diplomats and officials from the travel restrictions.

DATES: *Effective Date:* This rule is effective September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Kurland, Jr., Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, NW., Room L–603D, Washington, DC 20520–0106, (202) 663–1202, e-mail (*KurlandLB@state.gov*).

SUPPLEMENTARY INFORMATION: On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008, Public Law 110–286, authorizing a broad range of new measures against the Burmese regime. Among these measures is a new category of visa inadmissibility, detailed in Section 5(a) of the Act. However, the Act permits the Secretary of State to issue, by regulation, exceptions to Section 5(a), in order for the United States and Burma to operate their diplomatic missions, to allow United States citizens to visit Burma, to permit authorized Burmese to conduct business at the United Nations, or as required by other applicable international agreements. Since diplomatic travel must often be approved in a short time frame, it would be impractical to issue a new regulation for each instance of Burmese diplomatic travel. This rule, then, will allow the Secretary to comply with the regulatory requirement set out in Section 5(f)(2) of the Act while making exceptions to Section 5(a) in accordance with Department of State regulations.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth in 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule regulates individual aliens who seek consideration for nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

Although this rule is not subject to Executive Order 12866, the Department has reviewed it to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order, and has determined that the benefits of the rule justify its costs.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Visas.

■ Accordingly, for the reasons set forth above, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

■ 2. Section 41.21 is amended by adding paragraph (d)(4):

§ 41.21 Foreign officials—general.

(d) * * *

(4) Notwithstanding the provisions of Section 5(a) and consistent with Section 5(f)(2) of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008, Public Law 110–286, visas may be issued to visa applicants who are otherwise ineligible for a visa to travel to the United States under section 5(a)(1) of the Act:

(i) To permit the United States and Burma to operate their diplomatic

missions, and to permit the United States to conduct other official United States Government business in Burma;

(ii) To permit the United States to comply with the United Nations Headquarters Agreement and other applicable international agreements.

Dated: September 22, 2008.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E8–22956 Filed 9–29–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zones Honolulu, Prince William Sound, Southeast Alaska, and Western Alaska.

SUMMARY: This document informs owners and operators of facilities located within Captain of the Port Zones Honolulu, Prince William Sound, Southeast Alaska, and Western Alaska that they must implement access control procedures utilizing TWIC no later than February 12, 2009.

DATES: The compliance date for the TWIC regulations found in 33 CFR part 105 for Captain of the Port Zones Honolulu, Prince William Sound, Southeast Alaska, and Western Alaska is February 12, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this document as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels and outer continental shelf facilities must implement access control procedures utilizing TWIC, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e). The Coast Guard will continue to announce rolling compliance dates, as provided in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zones Honolulu, Prince William Sound, Southeast Alaska, and Western Alaska

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**.'' Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zones Honolulu, Prince William Sound, Southeast Alaska, and Western Alaska that the deadline for their compliance with Coast Guard and TSA TWIC requirements is February 12, 2009.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for these COTP Zones to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in one of these COTP Zones to enroll for their TWIC as soon as possible, if they haven't already. Additionally, we note that the TWIC Final Rule advises owners and operators of MTSA regulated facilities of their responsibility to notify employees of the TWIC requirements. Specifically, 33 CFR 105.200(b)(14) requires owners or operators of MTSA regulated facilities to ''[i]nform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications.'' Information on enrollment procedures, as well as a link to the pre-enrollment Web site (which will also enable an applicant to make an appointment for enrollment), may be found at *https://twicprogram.tsa.dhs.gov/TWICWebApp/*.

You may also visit our Web site at *homeport.uscg.mil/twic* for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that Web site. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: September 23, 2008.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.

[FR Doc. E8–22836 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8043]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation proving the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of the scheduled suspension for each community is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or obtain additional information, contact David Stearrett, FEMA, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

Previously, FEMA identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP, if they have been identified as having floodprone areas on the initial FEMA flood map for the community for more than a year (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds the notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because the communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Connecticut:				
Avon, Town of, Hartford County	090021	October 6, 1972, Emerg; May 16, 1977, Reg; September 26, 2008, Susp.	Sept. 26, 2008 ..	Sept. 26, 2008.
Bloomfield, Town of, Hartford County ...	090122	February 18, 1972, Emerg; August 15, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Bristol, City of, Hartford County	090023	May 2, 1975, Emerg; November 18, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Burlington, Town of, Hartford County	090145	April 14, 1975, Emerg; June 1, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
East Granby, Town of, Hartford County	090025	April 9, 1974, Emerg; January 6, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
East Hartford, Town of, Hartford County	090026	December 29, 1972, Emerg; December 18, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Enfield, Town of, Hartford County	090028	April 4, 1974, Emerg; March 28, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Farmington, Town of, Hartford County ..	090029	November 26, 1971, Emerg; August 15, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Glastonbury, Town of, Hartford County	090124	December 15, 1972, Emerg; June 15, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Hartland, Town of, Hartford County	090146	January 14, 1975, Emerg; December 16, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Manchester, Town of, Hartford County	090031	February 5, 1974, Emerg; August 16, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Marlborough, Town of, Hartford County	090148	February 5, 1975, Emerg; May 17, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
New Britain, City of, Hartford County	090032	August 22, 1973, Emerg; July 16, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Newington, Town of, Hartford County ...	090033	July 2, 1974, Emerg; October 16, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Plainville, Town of, Hartford County	090034	May 29, 1974, Emerg; November 19, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Simsbury, Town of, Hartford County	090035	December 10, 1971, Emerg; May 16, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
South Windsor, Town of, Hartford County.	090036	July 25, 1974, Emerg; May 1, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
West Hartford, Town of, Hartford County.	095082	June 19, 1970, Emerg; September 24, 1971, Reg; September 26, 2008, Susp.	.....do	Do.
Wethersfield, Town of, Hartford County	090040	April 14, 1972, Emerg; May 2, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Windsor, Town of, Hartford County	090041	June 25, 1975, Emerg; September 29, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Region II				
New York:				
Buffalo, City of, Erie County	360230	January 16, 1974, Emerg; November 18, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Gowanda, Village of, Erie County	360075	June 23, 1972, Emerg; June 1, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Holland, Town of, Erie County	360245	July 23, 1975, Emerg; May 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Tonawanda, City of, Erie County	360259	August 21, 1974, Emerg; August 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Wales, Town of, Erie County	360261	July 23, 1975, Emerg; August 15, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Williamsville, Village of, Erie County	360263	July 12, 1974, Emerg; March 1, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Allison, Township, Clinton County	421534	November 11, 1975, Emerg; September 3, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Avis, Borough, Clinton County	420318	June 4, 1973, Emerg; January 16, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Bald Eagle, Township, Clinton County ..	420319	May 22, 1973, Emerg; February 4, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Beech Creek, Borough, Clinton County	420320	June 3, 1974, Emerg; August 2, 1990, Reg; September 26, 2008, Susp.	.....do	Do.
Beech Creek, Township, Clinton County	420321	August 30, 1973, Emerg; September 5, 1990, Reg; September 26, 2008, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Castanea, Township, Clinton County	420322	April 10, 1973, Emerg; February 2, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Chapman, Township, Clinton County	420323	August 29, 1973, Emerg; December 18, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Colebrook, Township, Clinton County ...	420342	July 25, 1973, Emerg; June 15, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Crawford, Township, Clinton County	421535	March 17, 1977, Emerg; September 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Dunnstable, Township, Clinton County	420325	May 23, 1973, Emerg; March 1, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
East Keating, Township, Clinton County	421536	December 12, 1974, Emerg; October 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Flemington, Borough, Clinton County ...	420326	March 9, 1973, Emerg; February 2, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Gallagher, Township, Clinton County	421537	July 21, 1982, Emerg; September 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Greene, Township, Clinton County	421538	October 14, 1975, Emerg; September 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Grugan, Township, Clinton County	421539	April 6, 1977, Emerg; December 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Lamar, Township, Clinton County	420327	July 9, 1973, Emerg; March 16, 1988, Reg; September 26, 2008, Susp.	.....do	Do.
Leidy, Township, Clinton County	421540	February 17, 1977, Emerg; September 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Lock Haven, City, Clinton County	420328	November 17, 1972, Emerg; February 2, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Logan, Township, Clinton County	421541	October 14, 1975, Emerg; May 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Loganton, Township, Clinton County	421533	September 8, 1982, Emerg; September 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Mill Hall, Borough, Clinton County	420330	April 17, 1973, Emerg; February 16, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Noyes, Township, Clinton County	420331	July 27, 1973, Emerg; November 5, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Pine Creek, Township, Clinton County	420332	April 24, 1973, Emerg; April 1, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Porter, Township, Clinton County	420333	June 1, 1973, Emerg; July 15, 1988, Reg; September 26, 2008, Susp.	.....do	Do.
Renovo, Borough, Clinton County	420334	February 9, 1973, Emerg; December 28, 1976, Reg; September 26, 2008, Susp.	.....do	Do.
South Renovo, Borough, Clinton County.	420335	June 18, 1974, Emerg; February 2, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Wayne, Township, Clinton County	420336	June 3, 1974, Emerg; November 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
West Keating, Township, Clinton County.	421542	June 15, 1982, Emerg; October 1, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Woodward, Township, Clinton County ..	420337	March 16, 1973, Emerg; January 16, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Virginia:				
Henry County, Unincorporated Areas ...	510078	October 18, 1973, Emerg; November 5, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Pulaski, Town, Pulaski County	510126	November 8, 1973, Emerg; August 1, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Pulaski County, Unincorporated Areas	510125	September 27, 1973, Emerg; September 29, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Ridgeway, Town, Henry County	510079	June 10, 1975, Emerg; November 6, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Region IV				
Georgia:				
Allenhurst, Town of, Liberty County	130350	May 6, 1975, Emerg; June 17, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Aragon, City of, Polk County	130152	December 19, 1973, Emerg; September 2, 1988, Reg; September 26, 2008, Susp.	.....do	Do.
Buchanan, City of, Haralson County	130336	April 9, 1976, Emerg; December 15, 1990, Reg; September 26, 2008, Susp.	.....do	Do.
Byron, City of, Peach County	130374	January 15, 1976, Emerg; July 3, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Carnesville, City of, Franklin County	130082	June 4, 1975, Emerg; September 4, 1985, Reg; September 26, 2008, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Chattooga County, Unincorporated Areas.	130036	April 13, 1989, Emerg; February 17, 1993, Reg; September 26, 2008, Susp.	.....do	Do.
Crawford County, Unincorporated Areas	130302	August 12, 1997, Emerg; August 12, 1997, Reg; September 26, 2008, Susp.	.....do	Do.
Dahlonega, City of, Lumpkin County	130129	December 17, 1976, Emerg; September 18, 1991, Reg; September 26, 2008, Susp.	.....do	Do.
Dawson County, Unincorporated Areas	130304	April 29, 1985, Emerg; December 15, 1990, Reg; September 26, 2008, Susp.	.....do	Do.
Dawsonville, City of, County	130064	March 14, 1977, Emerg; May 21, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Eatonton, City of, Putnam County	130218	July 3, 1975, Emerg; June 19, 1989, Reg; September 26, 2008, Susp.	.....do	Do.
Flemington, City of, Liberty County	130124	November 27, 1982, Emerg; May 17, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Forsyth, City of, Monroe County	130359	August 12, 1994, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
Fort Valley, City of, Peach County	130148	March 13, 1975, Emerg; June 25, 1976, Reg; September 26, 2008, Susp.	.....do	Do.
Franklin County, Unincorporated Areas	130659	September 19, 2005, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
Franklin Springs, City of, Franklin County.	130313	March 11, 1980, Emerg; May 28, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Hahira, City of, Lowndes County	130352	May 5, 1976, Emerg; May 15, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Haralson County, Unincorporated Areas	130495	January 16, 1987, Emerg; June 15, 1988, Reg; September 26, 2008, Susp.	.....do	Do.
Liberty County, Unincorporated Areas ..	130123	January 22, 1975, Emerg; December 1, 1983, Reg; September 26, 2008, Susp.	.....do	Do.
Long County, Unincorporated Areas	130127	January 7, 1976, Emerg; September 27, 1985, Reg; September 26, 2008, Susp.	.....do	Do.
Ludowici, City of, Long County	130128	May 21, 2007, Emerg; May 21, 2007, Reg; September 26, 2008, Susp.	.....do	Do.
Lumpkin County, Unincorporated Areas	130354	June 14, 2002, Emerg; June 14, 2002, Reg; September 26, 2008, Susp.	.....do	Do.
Midway, City of, Liberty County	130351	July 22, 1975, Emerg; September 30, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Peach County, Unincorporated Areas ...	130373	July 24, 1975, Emerg; July 3, 1990, Reg; September 26, 2008, Susp.	.....do	Do.
Plainville, City of, Gordon County	130319	February 4, 1976, Emerg; June 18, 1987, Reg; September 26, 2008, Susp.	.....do	Do.
Putnam County, Unincorporated Areas	130540	October 23, 1995, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
Riceboro, City of, Liberty County	130126	June 26, 1975, Emerg; November 4, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Roberta, City of, Crawford County	130303	March 22, 1976, Emerg; September 29, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Stephens County, Unincorporated Areas.	130391	May 6, 1975, Emerg; August 15, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
Summerville, City of, Chattooga County	130037	February 11, 1974, Emerg; August 15, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
Thunderbolt, City of, Chatham County ..	130460	April 22, 1980, Emerg; July 2, 1987, Reg; September 26, 2008, Susp.	.....do	Do.
Toccoa, City of, Stephens County	130313	June 20, 1975, Emerg; December 4, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
Valdosta, City of, Lowndes County	130200	December 17, 1973, Emerg; January 19, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Vernonburg, Village of, Chatham County.	135165	March 19, 1971, Emerg; July 27, 1973, Reg; September 26, 2008, Susp.	.....do	Do.
South Carolina: Clover, Town of, York County.	450194	July 7, 1975, Emerg; May 15, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Tennessee:				
Carter County, Unincorporated Areas ...	470024	May 30, 1979, Emerg; January 3, 1990, Reg; September 26, 2008, Susp.	.....do	Do.
Elizabethton, City of, Carter County	475425	March 30, 1970, Emerg; March 30, 1970, Reg; September 26, 2008, Susp.	.....do	Do.
McMinnville, City of, Warren County	470195	January 15, 1974, Emerg; December 1, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Viola, Town of, Warren County	470196	April 9, 1975, Emerg; June 3, 1986, Reg; September 26, 2008, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region V				
Wisconsin:				
Cudahy, City of, Milwaukee County	550272	May 30, 1975, Emerg; December 15, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Fox Point, Village of, Milwaukee County	550274	August 7, 1973, Emerg; May 16, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Franklin, City of, Milwaukee County	550273	December 29, 1972, Emerg; September 30, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Greendale, Village of, Milwaukee County.	550276	May 23, 1975, Emerg; August 2, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Greenfield, Village of, Milwaukee County.	550277	March 9, 1973, Emerg; June 1, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Hales Corners, Village of, Milwaukee County.	550524	November 13, 1973, Emerg; June 15, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Oak Creek, City of, Milwaukee County	550279	August 20, 1973, Emerg; September 29, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
River Hills, Village of, Milwaukee County.	550280	June 12, 1974, Emerg; April 15, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Shorewood, Village of, Milwaukee County.	550283	August 15, 1974, Emerg; August 11, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
South Milwaukee, City of, Milwaukee County.	550283	February 11, 1974, Emerg; April 15, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
St. Francis, City of, Milwaukee County	550281	September 12, 1975, Emerg; July 7, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Wauwatosa, City of, Milwaukee County	550284	February 12, 1974, Emerg; December 1, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Whitefish Bay, Village of, Milwaukee County.	550286	June 19, 1973, Emerg; May 1, 1987, Reg; September 26, 2008, Susp.	.....do	Do.
Region VI				
Louisiana: Bossier, City of, Bossier Parrish	220033	June 26, 1974, Emerg; April 4, 1983, Reg; September 26, 2008, Susp.	.....do	Do.
Oklahoma:				
Copan, Town of, Washington County ...	400361	July 12, 1976, Emerg; July 26, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Geary, City of, Canadian County	400381	October 28, 2004, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
Purcell, City of, Cleveland County	400104	November 21, 1975, Emerg; July 2, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Ramona, Town of, Washington County	400222	April 16, 1976, Emerg; March 31, 1988, Reg; September 26, 2008, Susp.	.....do	Do.
Texas:				
Annetta South, Town of, Parker County	481665	November 1, 1999, Emerg; November 1, 1999, Reg; September 26, 2008, Susp.	.....do	Do.
Austin, City of, Travis County	480624	May 9, 1975, Emerg; September 2, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Bartlett, City of, Williamson County	480707	February 8, 1977, Emerg; March 25, 1985, Reg; September 26, 2008, Susp.	.....do	Do.
Bruceville-Eddy, City of, McLennan County.	481302	October 4, 2004, Emerg; October 4, 2004, Reg; September 26, 2008, Susp.	.....do	Do.
Cedar Park, City of, Williamson County	481282	June 4, 1981, Emerg; September 27, 1991, Reg; September 26, 2008, Susp.	.....do	Do.
Dallas, City of, Dallas County	480171	June 30, 1970, Emerg; March 16, 1983, Reg; September 26, 2008, Susp.	.....do	Do.
Garland, City of, Dallas County	485471	August 7, 1970, Emerg; April 16, 1971, Reg; September 26, 2008, Susp.	.....do	Do.
Georgetown, City of, Williamson County	480668	June 3, 1974, Emerg; September 27, 1991, Reg; September 26, 2008, Susp.	.....do	Do.
Harker Heights, City of, Bell County	480029	November 27, 1974, Emerg; August 3, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Heath, City of, Rockwall County	480545	November 11, 1977, Emerg; February 1, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Hewitt, City of, McLennan County	480458	March 25, 1977, Emerg; May 1, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Holland, City of, Bell County	480030	May 27, 1975, Emerg; August 3, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Killeen, City of, Bell County	480031	December 10, 1974, Emerg; August 3, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Lacy-Lakeview, City of, McLennan County.	480927	January 26, 1978, Emerg; October 9, 1979, Reg; September 26, 2008, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lago Vista, City of, Travis County	481588	January 29, 1976, Emerg; April 1, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Lakeway, City of, Travis County	481303	June 27, 1977, Emerg; November 5, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Little River-Academy, City of, Bell County.	481579	August 23, 1983, Emerg; May 1, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
Manor, City of, Travis County	481027	June 13, 1975, Emerg; May 25, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Mart, City of, McLennan County	480929	August 9, 1979, Emerg; August 9, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
McGregor, City of, McLennan County	480459	April 7, 1975, Emerg; February 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
McLendon-Chisholm, City of, Rockwall County.	480546	February 21, 1997, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
McLennan County, Unincorporated Areas.	480456	September 16, 1981, Emerg; September 16, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Morgan's Point Resort, City of, Bell County.	481525	June 12, 2001, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
Parker County, Unincorporated Areas	480520	January 22, 1979, Emerg; September 27, 1991, Reg; September 26, 2008, Susp.	.....do	Do.
Robinson, City of, McLennan County	480460	December 26, 1978, Emerg; January 17, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Rockwall County, Unincorporated Areas	480543	May 19, 2001, Emerg; May 19, 2001, Reg; September 26, 2008, Susp.	.....do	Do.
Rollingwood, City of, Travis County	481029	February 3, 1975, Emerg; September 29, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Royse, City of, Rockwall County	480548	July 3, 1975, Emerg; July 16, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Salado, Village of, Bell County	480033	July 8, 2004, Emerg; July 8, 2004, Reg; September 26, 2008, Susp.	.....do	Do.
San Leanna, Village of, Travis County	481305	March 11, 1980, Emerg; March 11, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Sanctuary, City of, Parker County	481285	April 16, 1986, Emerg; November 1, 1989, Reg; September 26, 2008, Susp.	.....do	Do.
Smith County, Unincorporated Areas	481185	January 5, 1979, Emerg; July 2, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Sunset Valley, City of, Travis County	481127	November 24, 1975, Emerg; March 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Taylor, City of, Williamson County	480670	November 7, 1974, Emerg; March 1, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Thrall, City of, Williamson County	481632	September 6, 1991, Emerg; September 27, 1991, Reg; September 26, 2008, Susp.	.....do	Do.
Travis County, Unincorporated Areas	481026	January 29, 1976, Emerg; April 1, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Troup, City of, Smith County	480570	August 15, 1975, Emerg; January 23, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Troy, City of, Bell County	480709	July 20, 1977, Emerg; June 1, 1981, Reg; September 26, 2008, Susp.	.....do	Do.
Tyler, City of, Smith County	480571	August 5, 1974, Emerg; August 1, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Valley Mills, City of, McLennan County	480054	July 31, 1975, Emerg; November 15, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Waco, City of, McLennan County	480461	November 26, 1971, Emerg; November 2, 1977, Reg; September 26, 2008, Susp.	.....do	Do.
Weatherford, City of, Parker County	480522	September 13, 1974, Emerg; August 5, 1986, Reg; September 26, 2008, Susp.	.....do	Do.
Weir, City of, Williamson County	481674	April 19, 1996, Emerg; April 19, 1996, Reg; September 26, 2008, Susp.	.....do	Do.
Whitehouse, City of, Smith County	480572	June 25, 1975, Emerg; February 13, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Willow Park, City of, Parker County	481164	November 11, 1977, Emerg; March 18, 1987, Reg; September 26, 2008, Susp.	.....do	Do.
Woodway, City of, McLennan County	480462	January 28, 1975, Emerg; May 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Region IX				
California:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Bell Gardens, City of, Angeles County	060101	September 27, 1991, Emerg; September 27, 1991, Reg; September 26, 2008, Susp.	.....do	Do.
Calexico, City of, Imperial County	060067	August 4, 1978, Emerg; January 20, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
El Segundo, City of, Los Angeles County.	060118	February 21, 1975, Emerg; May 25, 1978, Reg; September 26, 2008, Susp.	.....do	Do.
Imperial County, Unincorporated Areas	060065	October 14, 1975, Emerg; March 15, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
La Mirada, City of, Los Angeles County	060131	August 7, 1975, Emerg; July 2, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Maricopa, City of, Kern County	060079	February 13, 1976, Emerg; September 24, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
Napa County, Unincorporated Areas	060205	January 29, 1971, Emerg; February 1, 1980, Reg; September 26, 2008, Susp.	.....do	Do.
Redondo Beach, City of, Los Angeles County.	060150	April 22, 1975, Emerg; September 15, 1983, Reg; September 26, 2008, Susp.	.....do	Do.
Santa Monica, City of, Los Angeles County.	060159	September 8, 1975, Emerg; April 30, 1982, Reg; September 26, 2008, Susp.	.....do	Do.
Region X				
Idaho: Kellogg, City of, Shoshone County.	160131	June 26, 1974, Emerg; July 2, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Mullan, City of, Shoshone County	160115	May 13, 1975, Emerg; August 1, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Shoshone County, Unincorporated Areas.	160114	April 9, 1974, Emerg; September 5, 1979, Reg; September 26, 2008, Susp.	.....do	Do.
Twin Falls, City of, Twin Falls County ...	160120	June 2, 1975, Emerg; November 1, 1984, Reg; September 26, 2008, Susp.	.....do	Do.
Twin Falls County, Unincorporated Areas.	160231	February 25, 1999, Emerg; —, Reg; September 26, 2008, Susp.	.....do	Do.
Wallace, City of, Shoshone County	160118	May 15, 1974, Emerg; July 2, 1979, Reg; September 26, 2008, Susp.	.....do	Do.

*.....do=Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 22, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–22953 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–1008]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

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

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

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

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

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

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

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

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

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in

the National Flood Insurance Program (NFIP).

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego.	Unincorporated areas of San Diego County (08–09–0782P).	August 18, 2008; August 25, 2008; *San Diego Union-Tribune*.	The Honorable Greg Cox, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	December 23, 2008	060284
Colorado: El Paso ...	City of Colorado Springs (07–08–0958P).	September 2, 2008; September 9, 2008; *The Gazette*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	August 15, 2008	080060
Iowa: Dallas	City of Granger (08–07–0907P).	August 21, 2008; August 28, 2008; *Northeast Dallas Record*.	The Honorable James Doyle, Mayor, City of Granger, 1906 Main Street, Granger, IA 50109.	July 31, 2008	190104
Oklahoma: Tulsa	City of Tulsa (08–06–1865P).	July 31, 2008; August 7, 2008; *Tulsa World*.	The Honorable Kathryn L. Taylor, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	July 17, 2008	405381
Texas:					
Brazos	City of Bryan (08–06–0692P).	August 7, 2008; August 14, 2008; *Bryan College Station Eagle*.	The Honorable D. Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	July 25, 2008	480082
Brazos	City of College Station (08–06–1882P).	July 31, 2008; August 7, 2008; *Bryan College Station Eagle*.	The Honorable Ben White, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	December 5, 2008	480083
Guadalupe	City of Cibolo (08–06–0784P).	August 20, 2008; August 27, 2008; *Seguin Gazette-Enterprise*.	The Honorable Jennifer Hartman, Mayor, City of Cibolo, P.O. Box 826, Cibolo, TX 78108–0826.	December 26, 2008	480267
Palo Pinto and Parker.	City of Mineral Wells (08–06–2504P).	September 2, 2008; September 9, 2008; *Mineral Wells Index*.	The Honorable Clarence Holliman, Mayor, City of Mineral Wells, 115 Southwest First Street, Mineral Wells, TX 76067.	January 7, 2009	480517
Virginia: Roanoke	Unincorporated areas of Roanoke County (08–03–0782P).	August 15, 2008; August 22, 2008; *The Roanoke Times*.	The Honorable Richard Flora, Chairman, Roanoke County Board of Supervisors, P.O. Box 29800, Roanoke, VA 24018.	December 22, 2008	510190

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

Dated: September 19, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–22951 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. MARAD–2008–0075]

RIN 2133–AB71

Capital Construction Fund

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration is issuing this final rule to implement provisions of the Energy Independence and Security Act of 2007 and amend the definition of a ''qualified vessel'' under the Capital Construction Fund. This rule is final because its underlying statutes leave no discretion; therefore, a notice of proposed rulemaking is not required.

DATES: *Effective Date:* This final rule is effective September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration at 202–366–5320, via e-mail at *Murray.Bloom@dot.gov,* or by writing to Murray Bloom, Office of the Chief Counsel, Maritime Administration, MAR–222, 1200 New

Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Capital Construction Fund allows a deferral of federal income tax provided that the amount of the tax deferral is deposited into a fund to be used for the purpose of acquiring, constructing or reconstructing U.S.-built, U.S.-documented vessels. Such vessels are called ''qualified vessels,'' and they must be operated in the United States foreign, Great Lakes or noncontiguous domestic trade. On December 19, 2007, the President signed Public Law 110–140, the Energy Independence and Security Act of 2007, which contains Title XI—Energy Transportation and Infrastructure, Subtitle C—Department of Transportation, authorizing the creation of a new Short Sea Transportation Program. The Short Sea Transportation Program establishes an expanded definition of a qualified vessel under the Capital Construction Fund. Public Law 110–140 also expands the trade permitted to qualified vessels by allowing qualified vessels to operate in the short sea transportation trade in addition to the other trades presently permitted. Since Public Law 110–140 specifically defines ''short sea transportation trade,'' this final rule merely amends the existing regulation by including the statutory definition and making other conforming changes. Separately, Congress enacted Public Law 109–304 to complete the codification of Title 46, United States Code. This statute restated section 607 of the Merchant Marine Act, 1936, without substantive change. Section 607 is now section 53501, *et seq*. This final rule updates the statutory references in the regulation to conform to the new codification.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Public Law 104–121

This rulemaking is not significant under section 3(f) of Executive Order 12866 and as a consequence, OMB did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. The Maritime Administration believes that the economic impact of this rulemaking is so minimal as to not warrant the preparation of a full regulatory evaluation. This rulemaking amends the definition of a qualified vessel to conform to the newly enacted statute.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, seeks to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes. Executive Order 13175 does not apply to this regulation as it does not affect, directly or indirectly, Indian tribes.

Regulatory Flexibility

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this final rule, the Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy. Department of Transportation guidance requires the use of a revised threshold figure of $136.1 million, which is the value of $100 million in 2008 after adjusting for inflation.

Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq*.) and we have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This final rule does not change the environmental effects of the current Capital Construction Fund program. This final rule implements a definition of a qualified vessel for the Capital Construction Fund. This rulemaking will not result, either individually or cumulatively, in a significant impact on the environment.

Paperwork Reduction

This rule does not establish a new requirement for the collection of information. Thus, the Office of Management and Budget (OMB) will not be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq*.).

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Privacy Act

You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478) or you may visit *http://www.regulations.gov.*

List of Subjects in 46 CFR Part 390

Income taxes, Investments, Maritime carriers, Vessels.

■ Accordingly, the Maritime Administration amends 46 CFR part 390 as follows:

PART 390—CAPITAL CONSTRUCTION FUND

■ 1. The authority citation for part 390 is amended to read as follows:

Authority: Secs. 53501, *et seq*., of Title 46, United States Code, formerly, section 607,

Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1177); 49 CFR 1.66.

■ 2. In the table below, for each section indicated in the left column, remove the phrase indicated in the middle column and add the phrase indicated in the right column:

Section	Remove	Add
390.2(a)(2)(i)	section 2 of the Shipping Act, 1916	46 U.S.C. 50501.
390.2(a)(2)(ii)	section 607(k)(1) of the Act	46 U.S.C. 53501.
390.2(a)(2)(iii)	section 607(k)(2) of the Act	46 U.S.C. 53501(5).
390.2(a)(2)(iii)	section 607(k) of the Act	46 U.S.C. 53501.
390.2(a)(2)(iii)	section 905(a) of the Act	46 U.S.C. 109(b).
390.3(a)	section 101 of the Act	46 U.S.C. 50501.
390.3(b)(2)(i)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.5(a)	section 607(k) of the Act	46 U.S.C. 53501.
390.5(b)(2) introductory text	section 607(b) of the Act	46 U.S.C. 53505.
390.5(c)(2) introductory text	section 607(f) of the Act	46 U.S.C. 53509.
390.5(c)(3)(ii)	section 506 of the Act	46 U.S.C. 53101 note.
390.5(c)(7)(ii)(A)	section 905 of the Act	46 U.S.C. 109.
390.7(a)(1)	section 607(b) of the Act	46 U.S.C. 53505.
390.7(a)(2)	section 607(d) of the Act	46 U.S.C. 53507.
390.7(b)(1)	section 607(c) of the Act	46 U.S.C. 53506.
390.7(c)(1)	section 607(d)(2) of the Act	46 U.S.C. 53507(b).
390.7(d)(1)	section 607(c) of the Act	46 U.S.C. 53506.
390.7(e)(1)	section 607(a) of the Act	46 U.S.C. 53504.
390.7(f)(1)	section 607(b)(2) of the Act	46 U.S.C. 53505(b).
390.7(h)(2)	section 607(c) of the Act	46 U.S.C. 53506.
390.7(i)	Title XI of the Act	46 U.S.C. Chapter 537.
390.8(a)	section 607(c) of the Act	46 U.S.C. 53506.
390.8(b)(3)(ii)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.8(c)(4)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.9(a)(1) introductory text	section 607(f) of the Act	46 U.S.C. 53509.
390.9(a)(2)	section 607(g) of the Act	46 U.S.C. 53510.
390.9(b)(4)	section 607(f)(1)(C)	46 U.S.C. 53509(a)(2).
390.9(c)(1)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.9(c)(4)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.10(a)(2)	section 607(h) of the Act	46 U.S.C. 53511.
390.11(c)(1)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.12(b)(2)	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
390.13(a)	section 607(f)(2) of the Act	46 U.S.C. 53509(c).
Appendix I to Part 390	section 2 of the Shipping Act, 1916	46 U.S.C. 50501.
Appendix I to Part 390	section 607(k) of the Act	46 U.S.C. 53501.
Appendix I to Part 390	section 607(f)(2) of the Act	46 U.S.C. 53509(c).
Appendix I to Part 390I	section 607(k) of the Act	46 U.S.C. 53501.

■ 3. Amend § 390.1 by:

■ A. Revising paragraph (a)(1) and (b) to read as set forth below;

■ B. Removing the phrase ''Section 607'' and adding in its place ''Chapter 535'' in paragraphs (a)(3) and (4); and

■ C. Removing the phrase ''Section 607 of the Act'' and adding in its place ''Chapter 535'' in paragraph (c).

§ 390.1 Scope of the regulations.

(a) *In general*—(1) *Scope.* The regulations prescribed in this part govern the capital construction fund (''fund'') authorized by 46 U.S.C. 53501 *et seq.*

* * * * *

(b) *Act.* For purposes of this part, the term Act shall mean Chapter 535 of Title 46, United States Code.

* * * * *

■ 4. Section 390.2 is amended by:

■ A. Removing the phrase ''section 607 of the Act'' and adding in its place ''Chapter 535'' in paragraph (a)(2) introductory text; and

■ B. Revising the last sentence of paragraph (a)(2)(iii) to read as follows:

§ 390.2 Application for an agreement.

(a) * * *

(2) * * *

(iii) * * * Such provisions state that the vessel will be operated in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade as defined in 46 U.S.C. 53501 and 46 U.S.C. 109(b); and

* * * * *

■ 5. Section 390.5 is amended by

■ A. Revising paragraph (c)(1)(iii);

■ B. Redesignating paragraphs (c)(6) through (c)(8) as paragraphs (c)(7) through (c)(9) and adding new paragraph (c)(6);

■ C. Removing the phrase ''section 607 of the Act'' and adding in its place ''Chapter 535'' in newly redesignated paragraph (c)(7)(i); and

■ D. Revising newly redesignated paragraphs (c)(7)(iv) and (c)(8)(iii);

§ 390.5 Agreement vessel.

* * * * *

(c) * * *

(1) * * *

(iii) Operated in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade.

* * * * *

(6) Short Sea Transportation Trade. The term short sea transportation trade means the carriage by vessel of cargo—

(i) That is:

(A) Contained in intermodal cargo containers and loaded by crane on the vessel; or

(B) Loaded on the vessel by means of wheeled technology; and

(ii) That is:

(A) Loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or

(B) Loaded at a port in Canada located in the Great Lakes Saint Lawrence

Seaway System and unloaded at a port in the United States.''

(7) * * *

(iv) Bunkering in support of non-qualified trade operations.

(8) * * *

(iii) Ship assist work, including lightering or shifting of a vessel at the end or beginning of a noncontiguous domestic, short sea transportation trade, Great Lakes or U.S. foreign trade voyage. In addition, the lightering of foreign-flag vessels in U.S. ports is permitted.

* * * * *

§ 390.12 [Amended]

■ 6. In § 390.12, remove the phrase ''section 607 of the Act'' and add in its place ''Chapter 535'' in paragraph (a)(1).

Appendix I to Part 390—[Amended]

■ 7. In Appendix I:

■ A. Remove the phrase ''section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177)'' and add in its place ''46 U.S.C. 53501 *et seq.*'' wherever it may occur; and

■ B. Remove ''19____'' and add in its place ''20____'' wherever it may occur.

Appendix II to Part 390—[Amended]

■ 8. In Appendix II:

■ A. Remove the phrase ''section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177)'' and add in its place ''46 U.S.C. 53501 *et seq.*'' wherever it may occur; and

■ B. Remove ''19____'' and add in its place ''20____'' wherever it may occur.

Appendix IV to Part 390—[Amended]

■ 9. In Appendix IV:

■ A. Remove the phrase ''Assistant General Counsel'' and add in its place ''Assistant Chief Counsel'' wherever it may occur; and

■ B. Remove ''19____'' and add in its place ''20____'' wherever it may occur.

Dated: September 18, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–22235 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[WC Docket No. 02–313; DA 08–2112; FCC 06–86]

Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published in the **Federal Register** on November 9, 2006, 71 FR 65743. The regulations related to rules that apply to the operations and activities of providers of telecommunications services.

DATES: Effective on September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Nicholas Degani, Wireline Competition Bureau, Competition Policy Division, at (202) 418–2277 or via the Internet at *nicholas.degani@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Commission published a document in the **Federal Register** on November 9, 2006, 71 FR 65743, summarizing the Commission's Report and Order in WC Docket No. 02–313, released August 21, 2006. The Report and Order included drafting errors regarding where to send comments on the proposed discontinuance, reduction, or impairment of domestic service by a common carrier. On September 17, 2008, the Commission published an erratum correcting the drafting errors.

Need for Correction

As published, the final regulations contain errors in the Commission's zip code.

List of Subjects in 47 CFR Part 63

Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ Accordingly, 47 CFR part 63 is corrected by making the following correcting amendments:

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403, and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 2. Section 63.71 is amended by revising the third sentence in paragraph (a)(5)(i) and the third sentence in paragraph (a)(5)(ii) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(a) * * *

(5) * * *

(i) * * * Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). * * *

(ii) * * * Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the Section 63.71 Application of (carrier's name). * * *

* * * * *

[FR Doc. E8–22803 Filed 9–29–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2008–0134]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2007, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to

conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements. Instead it provides a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. Accordingly, the agency believes that the preparation of a regulatory evaluation is not warranted for this rule.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no 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 as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be

obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was published in September 2007.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 400 to 599, which is due for revision on October 1, 2008, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation,* is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically, first by make and then by model.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1982–1989'' means ''1982 through 1989'').

(d) The initials ''MC'' used in the Make column mean ''Motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214;

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

	(d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401; (e) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401; (f) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401; (g) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 138, 201, 202a, 206, 208, 213, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216; (e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225; (f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (g) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (h) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Acura	Legend		1988	51		
Acura	Legend		1989	77		
Acura	Legend		1990–1992	305		
Alfa Romeo	164		1989	196		
Alfa Romeo	164		1991	76		
Alfa Romeo	164		1994	156		
Alfa Romeo	GTV		1985	124		
Alfa Romeo	Spider		1987	70		
Alfa Romeo	Spyder		1992	503		
Alpina	B12 5.0 Sedan		1988–1994			41
Aston Martin	Vanquish		2002–2004	430		
Audi	80		1988–1989	223		
Audi	100		1989	93		
Audi	100		1993	244		
Audi	100		1990–1992	317		
Audi	200 Quattro		1985	160		
Audi	A4		1996–2000	352		
Audi	A4, RS4, S4	8D	2000–2001	400		
Audi	A6		1998–1999	332		
Audi	A8		2000	424		
Audi	A8		1997–2000	337		
Audi	A8 Avant Quattro		1996	238		
Audi	RS6 & RS Avant		2003	443		
Audi	S6		1996	428		
Audi	S8		2000	424		
Audi	TT		2000–2001	364		
Bentley	Arnage (manufactured 1/1/01–12/31/01)		2001	473		
Bentley	Azure (LHD & RHD)		1998	485		
Bimota (MC)	DB4		2000	397		
Bimota (MC)	SB8		1999–2000	397		
BMW	316		1986	25		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
BMW	3 Series		1998	462		
BMW	3 Series		1999	379		
BMW	3 Series		2000	356		
BMW	3 Series		2001	379		
BMW	3 Series		1995–1997	248		
BMW	3 Series		2003–2004	487		
BMW	318i, 318iA		1983		23	
BMW	318i, 318iA		1984–1985		23	
BMW	318i, 318iA		1986		23	
BMW	318i, 318iA		1987–1989		23	
BMW	320, 320i, 320iA		1984–1985		16	
BMW	320i		1990–1991	283		
BMW	320i & 320iA		1983		16	
BMW	323i		1983–1985		67	
BMW	325, 325i, 325iA, 325E		1985–1986		30	
BMW	325e, 325eA		1984–1987		24	
BMW	325i		1991	96		
BMW	325i		1992–1996	197		
BMW	325i, 325iA		1987–1989		30	
BMW	325iS, 325iSA		1987–1989		31	
BMW	325iX		1990	205		
BMW	325iX, 325iXA		1988–1989		33	
BMW	5 Series		1990–1995	194		
BMW	5 Series		1995–1997	249		
BMW	5 Series		1998–1999	314		
BMW	5 Series		2000	345		
BMW	5 Series		2000–2002	414		
BMW	5 Series		2003–2004	450		
BMW	518i		1986	4		
BMW	520, 520i		1983		68	
BMW	520iA		1989	9		
BMW	524tdA		1985–1986		26	
BMW	525i		1989	5		
BMW	528e, 528eA		1983–1988		21	
BMW	528i, 528iA		1983–1984		20	
BMW	533i, 533iA		1983–1984		22	
BMW	535i, 535iA		1985–1989		25	
BMW	633CSi, 630CSiA		1983–1984		18	
BMW	635, 635CSi, 635CSiA		1983–1984		27	
BMW	635CSi, 635CSiA		1985–1989		27	
BMW	7 Series		1990–1991	299		
BMW	7 Series		1992	232		
BMW	7 Series		1993–1994	299		
BMW	7 Series		1995–1999	313		
BMW	7 Series		1999–2001	366		
BMW	728, 728i		1983–1985		70	
BMW	728i		1986	14		
BMW	730iA		1988	6		
BMW	732i		1983–1984		72	
BMW	733i, 733iA		1983–1984		19	
BMW	735, 735i, 735iA		1983–1984		28	
BMW	735i, 735iA		1985–1989		28	
BMW	745i		1983–1986		73	
BMW	8 Series		1991–1995	361		
BMW	850 Series		1997	396		
BMW	850i		1990	10		
BMW	All other passenger car models except those in the M1 and Z1 series.		1983–1989		78	
BMW	L7		1986–1987		29	
BMW	M3		1988–1989		35	
BMW	M5		1988		34	
BMW	M6		1987–1988		32	
BMW	X5 (manufactured 1/1/03–12/31/04)		2003–2004	459		
BMW	Z3		1996–1998	260		
BMW	Z3 (European market)		1999	483		
BMW	Z8		2000–2001	350		
BMW	Z8		2002	406		
BMW (MC)	C1		2000–2003			40
BMW (MC)	K1		1990–1993	228		
BMW (MC)	K100		1984–1992	285		
BMW (MC)	K1100, K1200		1993–1998	303		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
BMW (MC)	K75		1996			36
BMW (MC)	K75S		1987–1995	229		
BMW (MC)	R1100		1994–1997	231		
BMW (MC)	R1100		1998–2001	368		
BMW (MC)	R1100RS		1994	177		
BMW (MC)	R1150GS		2000	453		
BMW (MC)	R1200C		1998–2001	359		
BMW (MC)	R80, R100		1986–1995	295		
Buell (MC)	All Models		1995–2002	399		
Cadillac	DeVille		1994–1999	300		
Cadillac	DeVille (manufactured 8/1/99–12/31/00)		2000	448		
Cadillac	Seville		1991	375		
Cagiva	Gran Canyon 900 motorcycle		1999	444		
Carrocerias	Cimarron trailer		2006–2007			37
Chevrolet	400SS		1995	150		
Chevrolet	Astro Van		1997	298		
Chevrolet	Blazer		1986	405		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997	349		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001	461		
Chevrolet	Camaro		1999	435		
Chevrolet	Cavalier		1997	369		
Chevrolet	Corvette		1992	365		
Chevrolet	Corvette Coupe		1999	419		
Chevrolet	Suburban		1989–1991	242		
Chevrolet	Tahoe		2000	504		
Chevrolet	Tahoe		2001	501		
Chrysler	Daytona		1992	344		
Chrysler	Grand Voyager		1998	373		
Chrysler	LHS (Mexican market)		1996	276		
Chrysler	Shadow (Middle Eastern market)		1989	216		
Chrysler	Town and Country		1993	273		
Citroen	XM		1990–1992			1
Daimler	Limousine (LHD & RHD)		1985	12		
Dodge	Ram		1994–1995	135		
Ducati (MC)	748		1999–2003	421		
Ducati (MC)	851		1988	498		
Ducati (MC)	888		1993	500		
Ducati (MC)	900		2001	452		
Ducati (MC)	916		1999–2003	421		
Ducati (MC)	600SS		1992–1996	241		
Ducati (MC)	748 Biposto		1996–1997	220		
Ducati (MC)	900SS		1991–1996	201		
Ducati (MC)	996 Biposto		1999–2001	475		
Ducati (MC)	996R		2001–2002	398		
Ducati (MC)	Monster 600		2001	407		
Ducati (MC)	ST4S		1999–2005	474		
Eagle	Vision		1994	323		
Ferrari	456		1995	256		
Ferrari	550		2001	377		
Ferrari	575		2002–2003	415		
Ferrari	575		2004–2005	507		
Ferrari	208, 208 Turbo (all models)		1983–1988		76	
Ferrari	308 (all models)		1983–1985		36	
Ferrari	328 (all models)		1985		37	
Ferrari	328 (all models)		1988–1989		37	
Ferrari	328 GTS		1986–1987		37	
Ferrari	348 TB		1992	86		
Ferrari	348 TS		1992	161		
Ferrari	360		2001	376		
Ferrari	360 (manufactured before 9/1/02)		2002	402		
Ferrari	360 (manufactured after 9/31/02)		2002	433		
Ferrari	360 Modena		1999–2000	327		
Ferrari	360 Spider & Coupe		2003	410		
Ferrari	360 Series		2004	446		
Ferrari	456 GT & GTA		1999	445		
Ferrari	456 GT & GTA		1997–1998	408		
Ferrari	512 TR		1993	173		
Ferrari	550 Marinello		1997–1999	292		
Ferrari	Enzo		2003–2004	436		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Ferrari	F355		1995	259		
Ferrari	F355		1999	391		
Ferrari	F355		1996–1998	355		
Ferrari	F430 (manufactured prior to 9/1/06)		2005–2006	479		
Ferrari	F50		1995	226		
Ferrari	GTO		1985		38	
Ferrari	Mondial (all models)		1983–1989		74	
Ferrari	Testarossa		1989		39	
Ferrari	Testarossa		1987–1988		39	
Ford	Bronco (manufactured in Venezuela)		1995–1996	265		
Ford	Escort (Nicaraguan market)		1996	322		
Ford	Escort RS Cosworth		1994–1995			9
Ford	Explorer (manufactured in Venezuela)		1991–1998	268		
Ford	F150		2000	425		
Ford	Mustang		1993	367		
Ford	Mustang		1997	471		
Ford	Windstar		1995–1998	250		
Freightliner	FLD12064ST		1991–1996	179		
Freightliner	FTLD112064SD		1991–1996	178		
GMC	Suburban		1992–1994	134		
Harley Davidson (MC)	FX, FL, XL Series		1983–1997	202		
Harley Davidson (MC)	FX, FL, XL Series		1998	253		
Harley Davidson (MC)	FX, FL, XL Series		1999	281		
Harley Davidson (MC)	FX, FL, XL Series		2000	321		
Harley Davidson (MC)	FX, FL, XL Series		2001	362		
Harley Davidson (MC)	FX, FL, XL Series		2002	372		
Harley Davidson (MC)	FX, FL, XL Series		2003	393		
Harley Davidson (MC)	FX, FL, XL Series		2004	422		
Harley Davidson (MC)	FX, FL, XL Series		2005	472		
Harley Davidson (MC)	FX, FL, XL Series		2006	491		
Harley Davidson (MC)	FX, FL, XL, VR Series		2007	506		
Harley Davidson (MC)	FXSTC Soft Tail Custom		2007	499		
Harley Davidson (MC)	VRSCA		2002	374		
Harley Davidson (MC)	VRSCA		2003	394		
Harley Davidson (MC)	VRSCA		2004	422		
Hatty	45 ft double axle trailer		1999–2000			38
Heku	750 KG boat trailer		2005			33
Hobby	Exclusive 650 KMFE Trailer		2002–2003			29
Hobson	Horse Trailer		1985			8
Honda	Accord		1991	280		
Honda	Accord		1992–1999	319		
Honda	Accord (sedan & wagon (RHD))		1994–1997	451		
Honda	Civic DX Hatchback		1989	128		
Honda	CRV		2002	447		
Honda	CR–V		2005	489		
Honda	Prelude		1989	191		
Honda	Prelude		1994–1997	309		
Honda (MC)	CB 750 (CB750F2T)		1996	440		
Honda (MC)	CB1000F		1988	106		
Honda (MC)	CBR 250		1989–1994			22
Honda (MC)	CMX250C		1983–1987	348		
Honda (MC)	CP450SC		1986	174		
Honda (MC)	RVF 400		1994–2000	358		
Honda (MC)	VF750		1994–1998	290		
Honda (MC)	VFR 400		1994–2000	358		
Honda (MC)	VFR 400, RVF 400		1989–1993			24
Honda (MC)	VFR750		1990	34		
Honda (MC)	VFR750		1991–1997	315		
Honda (MC)	VFR800		1998–1999	315		
Honda (MC)	VT600		1991–1998	294		
Hyundai	Elantra		1992–1995	269		
Hyundai	XG350		2004	494		
Jaguar	Sovereign		1993	78		
Jaguar	S-Type		2000–2002	411		
Jaguar	XJ6		1983		41	
Jaguar	XJ6		1984		41	
Jaguar	XJ6		1985–1986		41	
Jaguar	XJ6		1987	47		
Jaguar	XJ6 Sovereign		1988	215		
Jaguar	XJS		1983–1985		40	
Jaguar	XJS		1986–1987		40	

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Jaguar	XJS, XJ6		1988–1990	336		
Jaguar	XJS		1991	175		
Jaguar	XJS		1992	129		
Jaguar	XJS		1994–1996	195		
Jaguar	XK–8		1998	330		
Jeep	Cherokee		1993	254		
Jeep	Cherokee (European market)		1991	211		
Jeep	Cherokee (LHD & RHD)		1994	493		
Jeep	Cherokee (LHD & RHD)		1995	180		
Jeep	Cherokee (LHD & RHD)		1996	493		
Jeep	Cherokee (Venezuelan market)		1992	164		
Jeep	Grand Cherokee		1994	404		
Jeep	Grand Cherokee		1997	431		
Jeep	Grand Cherokee		2001	382		
Jeep	Grand Cherokee (LHD—Japanese market)		1997	389		
Jeep	Liberty		2002	466		
Jeep	Liberty (Mexican market)		2004	457		
Jeep	Liberty		2005	505		
Jeep	Wrangler		1993	217		
Jeep	Wrangler		1995	255		
Jeep	Wrangler		1998	341		
Kawasaki (MC)	EL250		1992–1994	233		
Kawasaki (MC)	VN1500–P1/P2 series		2003	492		
Kawasaki (MC)	ZX1000–B1		1988	182		
Kawasaki (MC)	ZX400		1987–1997	222		
Kawasaki (MC)	ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999	312		
Kawasaki (MC)	ZX600		1985–1998	288		
Kawasaki (MC)	ZZR1100		1993–1998	247		
Ken-Mex	T800		1990–1996	187		
Kenworth	T800		1992	115		
Komet	Standard, Classic & Eurolite trailer		2000–2005	477		
KTM (MC)	Duke II		1995–2000	363		
Lamborghini	Diablo (except 1997 Coupe)		1996–1997	416		
Lamborghini	Diablo Coupe		1997			26
Lamborghini	Gallardo (manufactured 1/1/04–12/31/04)		2004	458		
Lamborghini	Gallardo (manufactured 1/1/06–8/31/06)		2006	508		
Lamborghini	Murcielago	Roadster	2005	476		
Land Rover	Defender 110		1993	212		
Land Rover	Defender 90 (manufactured before 9/1/97) VIN ''SALDV224*VA'' or ''SALDV324*VA''.		1997	432		
Land Rover	Discovery		1994–1998	338		
Land Rover	Discovery (II)		2000	437		
Land Rover	Range Rover		2004	509		
Lexus	GS300		1993–1996	293		
Lexus	GS300		1998	460		
Lexus	RX300		1998–1999	307		
Lexus	SC300		1991–1996	225		
Lexus	SC400		1991–1996	225		
Lincoln	Mark VII		1992	144		
Magni (MC)	Australia, Sfida		1996–1999	264		
Maserati	Bi-Turbo		1985	155		
Mazda	MPV		2000	413		
Mazda	MX–5 Miata		1990–1993	184		
Mazda	RX–7		1986	199		
Mazda	RX–7		1987–1995	279		
Mazda	Xedos 9		1995–2000	351		
Mercedes Benz	190	201.022	1984		54	
Mercedes Benz	200	124.020	1985		55	
Mercedes Benz	200	123.220	1983–1985		52	
Mercedes Benz	230	123.023	1983–1985		52	
Mercedes Benz	250	123.026	1983		52	
Mercedes Benz	250	123.026	1984–1985		52	
Mercedes Benz	280	123.030	1983–1985		52	
Mercedes Benz	190 D	201.126	1984–1989		54	
Mercedes Benz	190 D (2.2)	201.122	1984–1989		54	
Mercedes Benz	190 E	201.024	1983		54	
Mercedes Benz	190 E	201.029	1986		54	
Mercedes Benz	190 E	201.024	1990	22		
Mercedes Benz	190 E	201.024	1991	45		
Mercedes Benz	190 E	201.028	1992	71		
Mercedes Benz	190 E	201.018	1992	126		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	190 E		1993	454		
Mercedes Benz	190 E	201.034	1984–1985		54	
Mercedes Benz	190 E	201.028	1986–1989		54	
Mercedes Benz	190 E (2.3)	201.024	1984–1989		54	
Mercedes Benz	190 E (2.6)	201.029	1987–1989		54	
Mercedes Benz	190 E (2.6) 16	201.034	1986–1989		54	
Mercedes Benz	200 D	124.120	1986	17		
Mercedes Benz	200 E	124.021	1989	11		
Mercedes Benz	200 E	124.012	1991	109		
Mercedes Benz	200 E	124.019	1993	75		
Mercedes Benz	200 TE	124.081	1989	3		
Mercedes Benz	220 E		1993	168		
Mercedes Benz	220 TE Station Wagon		1993–1996	167		
Mercedes Benz	230 CE	124.043	1991	84		
Mercedes Benz	230 CE	123.043	1992	203		
Mercedes Benz	230 CE	123.243	1983–1984		52	
Mercedes Benz	230 E	124.023	1988	1		
Mercedes Benz	230 E	124.023	1989	20		
Mercedes Benz	230 E	124.023	1990	19		
Mercedes Benz	230 E	124.023	1991	74		
Mercedes Benz	230 E	124.023	1993	127		
Mercedes Benz	230 E	123.223	1983–1985		52	
Mercedes Benz	230 E	124.023	1985–1987		55	
Mercedes Benz	230 T	123.083	1983–1985		52	
Mercedes Benz	230 TE	124.083	1985		55	
Mercedes Benz	230 TE	124.083	1989	2		
Mercedes Benz	230 TE	123.283	1983–1985		52	
Mercedes Benz	240 D	123.123	1983–1985		52	
Mercedes Benz	240 TD	123.183	1983–1985		52	
Mercedes Benz	250 D		1992	172		
Mercedes Benz	250 E		1990–1993	245		
Mercedes Benz	260 E	124.026	1985		55	
Mercedes Benz	260 E	124.026	1986		55	
Mercedes Benz	260 E	124.026	1987–1989		55	
Mercedes Benz	260 E	124.026	1992	105		
Mercedes Benz	260 SE	126.020	1986	18		
Mercedes Benz	260 SE	126.020	1989	28		
Mercedes Benz	280 CE	123.053	1983–1985		52	
Mercedes Benz	280 E		1993	166		
Mercedes Benz	280 E	123.033	1983–1985		52	
Mercedes Benz	280 S	126.021	1983		53	
Mercedes Benz	280 SE	126.022	1983–1985		53	
Mercedes Benz	280 SE	116.024	1983–1988		51	
Mercedes Benz	280 SEL	126.023	1983–1985		53	
Mercedes Benz	280 SL	107.042	1983–1985		44	
Mercedes Benz	280 TE	123.093	1983–1985		52	
Mercedes Benz	300 CD	123.150	1983–1985		52	
Mercedes Benz	300 CD	123.153	1983–1985		52	
Mercedes Benz	300 CE	124.050	1988–1989		55	
Mercedes Benz	300 CE	124.051	1990	64		
Mercedes Benz	300 CE	124.051	1991	83		
Mercedes Benz	300 CE	124.050	1992	117		
Mercedes Benz	300 CE	124.061	1993	94		
Mercedes Benz	300 D	123.133	1983–1985		52	
Mercedes Benz	300 D	123.130	1983–1985		52	
Mercedes Benz	300 D	124.130	1985–1986		55	
Mercedes Benz	300 D Turbo	124.133	1985		55	
Mercedes Benz	300 D Turbo	124.193	1986		55	
Mercedes Benz	300 D Turbo	124.193	1987–1989		55	
Mercedes Benz	300 DT	124.133	1986–1989		55	
Mercedes Benz	300 E	124.030	1985		55	
Mercedes Benz	300 E	124.031	1992	114		
Mercedes Benz	300 E	124.030	1986–1989		55	
Mercedes Benz	300 E 4-Matic		1990–1993	192		
Mercedes Benz	300 SD	126.120	1983–1989		53	
Mercedes Benz	300 SE	126.024	1985		53	
Mercedes Benz	300 SE	126.024	1986–1987		53	
Mercedes Benz	300 SE	126.024	1988–1989		53	
Mercedes Benz	300 SE	126.024	1990	68		
Mercedes Benz	300 SEL	126.025	1986		53	
Mercedes Benz	300 SEL	126.025	1987		53	

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	300 SEL	126.025	1988–1989		53	
Mercedes Benz	300 SEL	126.025	1990	21		
Mercedes Benz	300 SL	107.041	1989	7		
Mercedes Benz	300 SL	129.006	1992	54		
Mercedes Benz	300 SL	107.041	1986–1988		44	
Mercedes Benz	300 TD	123.190	1983–1985		52	
Mercedes Benz	300 TD	123.193	1983–1985		52	
Mercedes Benz	300 TE	124.090	1990	40		
Mercedes Benz	300 TE		1992	193		
Mercedes Benz	300 TE	124.090	1986–1989		55	
Mercedes Benz	320 CE		1993	310		
Mercedes Benz	320 SL		1992–1993	142		
Mercedes Benz	380 SE	126.032	1983		53	
Mercedes Benz	380 SE	126.043	1983–1989		53	
Mercedes Benz	380 SE	126.032	1984–1989		53	
Mercedes Benz	380 SEL	126.033	1983–1989		53	
Mercedes Benz	380 SL	107.045	1983–1989		44	
Mercedes Benz	380 SLC	107.025	1983–1989		44	
Mercedes Benz	400 SE		1992–1994	296		
Mercedes Benz	420 E		1993	169		
Mercedes Benz	420 SE	126.034	1985		53	
Mercedes Benz	420 SE	126.034	1986		53	
Mercedes Benz	420 SE	126.034	1987–1989		53	
Mercedes Benz	420 SE		1990–1991	230		
Mercedes Benz	420 SEC		1990	209		
Mercedes Benz	420 SEL	126.035	1986–1989		53	
Mercedes Benz	420 SEL	126.035	1990	48		
Mercedes Benz	420 SL	107.047	1986		44	
Mercedes Benz	450 SEL	116.033	1983–1988		51	
Mercedes Benz	450 SEL (6.9)	116.036	1983–1988		51	
Mercedes Benz	450 SL	107.044	1983–1989		44	
Mercedes Benz	450 SLC	107.024	1983–1989		44	
Mercedes Benz	500 E	124.036	1991	56		
Mercedes Benz	500 SE	126.036	1983–1986		53	
Mercedes Benz	500 SE	126.036	1988	35		
Mercedes Benz	500 SE		1990	154		
Mercedes Benz	500 SE	140.050	1991	26		
Mercedes Benz	500 SEC	126.044	1983		53	
Mercedes Benz	500 SEC	126.044	1984–1989		53	
Mercedes Benz	500 SEC	126.044	1990	66		
Mercedes Benz	500 SEL	126.037	1983		53	
Mercedes Benz	500 SEL	126.037	1984–1989		53	
Mercedes Benz	500 SEL		1990	153		
Mercedes Benz	500 SEL	126.037	1991	63		
Mercedes Benz	500 SL	107.046	1983		44	
Mercedes Benz	500 SL	107.046	1986–1989		44	
Mercedes Benz	500 SL	129.066	1989	23		
Mercedes Benz	500 SL	126.066	1991	33		
Mercedes Benz	500 SL	129.006	1992	60		
Mercedes Benz	560 SEC	126.045	1986–1989		53	
Mercedes Benz	560 SEC	126.045	1990	141		
Mercedes Benz	560 SEC		1991	333		
Mercedes Benz	560 SEL	126.039	1986–1989		53	
Mercedes Benz	560 SEL	126.039	1990	89		
Mercedes Benz	560 SEL	140	1991	469		
Mercedes Benz	560 SL	107.048	1986–1989		44	
Mercedes Benz	600 SEC Coupe		1993	185		
Mercedes Benz	600 SEL	140.057	1993–1998	271		
Mercedes Benz	600 SL	129.076	1992	121		
Mercedes Benz	All other passenger car models except Model ID 114 and 115 with sales designations ''long,'' ''station wagon,'' or ''ambulance''.		1983–1989		77	
Mercedes Benz	C 320	203	2001–2002	441		
Mercedes Benz	C Class		1994–1999	331		
Mercedes Benz	C Class	203	2000–2001	456		
Mercedes Benz	CL 500		1998	277		
Mercedes Benz	CL 500		1999–2001	370		
Mercedes Benz	CL 600		1999–2001	370		
Mercedes Benz	CLK 320		1998	357		
Mercedes Benz	CLK Class		1999–2001	380		
Mercedes Benz	CLK-Class	209	2002–2005	478		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	E 200		1994	207		
Mercedes Benz	E 200		1995–1998	278		
Mercedes Benz	E 220		1994–1996	168		
Mercedes Benz	E 250		1994–1995	245		
Mercedes Benz	E 280		1994–1996	166		
Mercedes Benz	E 320		1994–1998	240		
Mercedes Benz	E 320	211	2002–2003	418		
Mercedes Benz	E 320 Station Wagon		1994–1999	318		
Mercedes Benz	E 420		1994–1996	169		
Mercedes Benz	E 500		1994	163		
Mercedes Benz	E 500		1995–1997	304		
Mercedes Benz	E Class	W210	1996–2002	401		
Mercedes Benz	E Class	211	2003–2004	429		
Mercedes Benz	E Series		1991–1995	354		
Mercedes Benz	G-Wagon	463	1996			11
Mercedes Benz	G-Wagon	463	1997			15
Mercedes Benz	G-Wagon	463	1998			16
Mercedes Benz	G-Wagon	463	1999–2000			18
Mercedes Benz	G-Wagon 300	463.228	1990–1992			5
Mercedes Benz	G-Wagon 300	463.228	1993			3
Mercedes Benz	G-Wagon 300	463.228	1994			5
Mercedes Benz	G-Wagon LWB V–8	463	1992–1996			13
Mercedes Benz	G-Wagon 320 LWB	463	1995			6
Mercedes Benz	G-Wagon 5 DR LWB	463	2001			21
Mercedes Benz	G-Wagon 5 DR LWB	463	2002	392		
Mercedes Benz	G-Wagon SWB	463	1990–1996			14
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR	463	2001–2003			25
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR	463	2004			28
Mercedes Benz	G-Wagon SWB	463	2005			31
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR (manufactured before 9/1/06).	463	2006			35
Mercedes Benz	Maybach		2004	486		
Mercedes Benz	S 280	140.028	1994	85		
Mercedes Benz	S 320		1994–1998	236		
Mercedes Benz	S 420		1994–1997	267		
Mercedes Benz	S 500		1994–1997	235		
Mercedes Benz	S 500		2000–2001	371		
Mercedes Benz	S 600		1995–1999	297		
Mercedes Benz	S 600		2000–2001	371		
Mercedes Benz	S 600 Coupe		1994	185		
Mercedes Benz	S 600L		1994	214		
Mercedes Benz	S Class		1993	395		
Mercedes Benz	S Class	140	1991–1994	423		
Mercedes Benz	S Class		1995–1998	342		
Mercedes Benz	S Class		1998–1999	325		
Mercedes Benz	S Class	W220	1999–2002	387		
Mercedes Benz	S Class	220	2002–2004	442		
Mercedes Benz	SE Class		1992–1994	343		
Mercedes Benz	SEL Class	140	1992–1994	343		
Mercedes Benz	SL Class		1993–1996	329		
Mercedes Benz	SL Class	W129	1997–2000	386		
Mercedes Benz	SL Class	R230	2001–2002			19
Mercedes Benz	SL-Class (European market)	230	2003–2005	470		
Mercedes Benz	SLK		1997–1998	257		
Mercedes Benz	SLK		2000–2001	381		
Mercedes Benz (truck)	Sprinter		2001–2005	468		
Mini	Cooper (European market)	Convertible	2005	482		
Mitsubishi	Galant Super Salon		1989	13		
Mitsubishi	Galant VX		1988	8		
Mitsubishi	Pajero		1984	170		
Moto Guzzi (MC)	California		2000–2001	495		
Moto Guzzi (MC)	California EV		2002	403		
Moto Guzzi (MC)	Daytona		1993	118		
Moto Guzzi (MC)	Daytona RS		1996–1999	264		
MV Agusta (MC)	F4		2000	420		
Nissan	240SX		1988	162		
Nissan	300ZX		1984	198		
Nissan	GTS & GTR (RHD) a.k.a. ‘‘Skyline’’ (manufactured 1/96–6/98).	R33	1996–1998			32
Nissan	Maxima		1989	138		
Nissan	Pathfinder		1987–1995	316		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Nissan	Pathfinder		2002	412		
Nissan	Stanza		1987	139		
Peugeot	405		1989	65		
Plymouth	Voyager		1996	353		
Pontiac	Firebird Trans Am		1995	481		
Pontiac (MPV)	Trans Sport		1993	189		
Porsche	911		1997–2000	346		
Porsche	928		1991–1996	266		
Porsche	928		1993–1998	272		
Porsche	944		1983		61	
Porsche	911 (996) Carrera		2002–2004	439		
Porsche	911 (996) GT3		2004	438		
Porsche	911 C4		1990	29		
Porsche	911 Cabriolet		1984–1989		56	
Porsche	911 Carrera		1983–1989		56	
Porsche	911 Carrera 2 & Carrera 4		1992	52		
Porsche	911 Carrera		1993	165		
Porsche	911 Carrera		1994	103		
Porsche	911 Carrera		1995–1996	165		
Porsche	911 Coupe		1983–1989		56	
Porsche	911 Targa		1983–1989		56	
Porsche	911 Turbo		1992	125		
Porsche	911 Turbo		2001	347		
Porsche	911 Turbo		1983–1989		56	
Porsche	924 Coupe		1983–1989		59	
Porsche	924 S		1987–1989		59	
Porsche	924 Turbo Coupe		1983–1989		59	
Porsche	928 Coupe		1983–1989		60	
Porsche	928 GT		1983–1989		60	
Porsche	928 S Coupe		1983–1989		60	
Porsche	928 S4		1983–1989		60	
Porsche	928 S4		1990	210		
Porsche	944 Coupe		1984–1989		61	
Porsche	944 S Cabriolet		1990	97		
Porsche	944 S Coupe		1987–1989		61	
Porsche	944 S2 (2-door Hatchback)		1990	152		
Porsche	944 Turbo Coupe		1985–1989		61	
Porsche	946 Turbo		1994	116		
Porsche	All other passenger car models except Model 959		1983–1989		79	
Porsche	Boxster		1997–2001	390		
Porsche	Boxster (manufactured before 9/1/02)		2002	390		
Porsche	Carrera GT		2004–2005	463		
Porsche	Cayenne		2003–2004	464		
Porsche	GT2		2001			20
Porsche	GT2		2002	388		
Rolls Royce	Bentley		1987–1989	340		
Rolls Royce	Bentley Brooklands		1993	186		
Rolls Royce	Bentley Continental R		1990–1993	258		
Rolls Royce	Bentley Turbo		1986	53		
Rolls Royce	Bentley Turbo R		1995	243		
Rolls Royce	Bentley Turbo R		1992–1993	291		
Rolls Royce	Camargue		1984–1985	122		
Rolls Royce	Corniche		1983–1985	339		
Rolls Royce	Phantom		2004	455		
Rolls Royce	Silver Spur		1984	188		
Saab	9.3		2003	426		
Saab	900		1983	158		
Saab	9000		1988	59		
Saab	9000		1994	334		
Saab	900 S		1987–1989	270		
Saab	900 SE		1990–1994	219		
Saab	900 SE		1995	213		
Saab	900 SE		1996–1997	219		
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2005			30
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2002–2004			27
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) (manufactured before 9/1/06).		2006			34
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) (manufactured before 9/1/06).		2007			39

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Suzuki (MC)	GS 850		1985	111		
Suzuki (MC)	GSF 750		1996–1998	287		
Suzuki (MC)	GSX 750		1983	208		
Suzuki (MC)	GSX1300R a.k.a. "Hayabusa"		1999–2006	484		
Suzuki (MC)	GSX–R 1100		1986–1997	227		
Suzuki (MC)	GSX–R 750		1986–1998	275		
Suzuki (MC)	GSX–R 750		1999–2003	417		
Toyota	4-Runner		1998	449		
Toyota	Avalon		1995–1998	308		
Toyota	Camry		1987–1988		63	
Toyota	Camry		1989	39		
Toyota	Celica		1987–1988		64	
Toyota	Corolla		1987–1988		65	
Toyota	Land Cruiser		1983–1988	252		
Toyota	Land Cruiser		1989	101		
Toyota	Land Cruiser		1990–1996	218		
Toyota	MR2		1990–1991	324		
Toyota	Previa		1991–1992	326		
Toyota	Previa		1993–1997	302		
Toyota	RAV4		1996	328		
Toyota	RAV4		2005	480		
Toyota	Van		1987–1988	200		
Triumph (MC)	Thunderbird		1995–1999	311		
Vespa (MC)	ET2, ET4		2001–2002	378		
Vespa (MC)	LX and PX		2004–2005	496		
Volkswagen	Eurovan		1993–1994	306		
Volkswagen	Golf		1987	159		
Volkswagen	Golf		1988	80		
Volkswagen	Golf		2005	502		
Volkswagen	Golf III		1993	92		
Volkswagen	Golf Rallye		1988	73		
Volkswagen	Golf Rallye		1989	467		
Volkswagen	GTI (Canadian market)		1991	149		
Volkswagen	Jetta		1994–1996	274		
Volkswagen	Passat	Wagon & Sedan	2004	488		
Volkswagen	Passat 4-door Sedan		1992	148		
Volkswagen	Scirocco		1986	42		
Volkswagen	Transporter		1986–1987	490		
Volkswagen	Transporter		1988–1989	284		
Volkswagen	Transporter		1990	251		
Volvo	740 GL		1992	137		
Volvo	740 Sedan		1988	87		
Volvo	850 Turbo		1995–1998	286		
Volvo	940 GL		1992	137		
Volvo	940 GL		1993	95		
Volvo	945 GL	Wagon	1994	132		
Volvo	960 Sedan & Wagon		1994	176		
Volvo	C70		2000	434		
Volvo	S70		1998–2000	335		
Yamaha (MC)	Drag Star 1100		1999–2007	497		
Yamaha (MC)	FJ1200 (4 CR)		1991	113		
Yamaha (MC)	FJR 1300		2002			23
Yamaha (MC)	R1		2000	360		
Yamaha (MC)	RD–350		1983	171		
Yamaha (MC)	Virago		1990–1998	301		

Issued on: September 23, 2008.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E8–22831 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 73, No. 190
Tuesday, September 30, 2008

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 762

RIN 0560–AH66

Maximum Interest Rates on Guaranteed Farm Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend its guaranteed farm loan program regulations governing interest rates to increase clarity and to be more consistent with other government loan guarantee programs. FSA is proposing to tie the maximum interest rate that may be charged on FSA guaranteed farm loans to nationally published indices such as the Wall Street Journal Prime (also known as New York Prime), or the 10-year Treasury note rate unless the lender uses a formal written risk-based pricing model for loans, in which case the rate will be the rate charged to moderate risk borrowers. This proposed rule specifically asks for comments on the index to be used and the maximum allowable spread between the base rate and the rate to be charged to FSA guaranteed borrowers.

DATES: We will consider comments that we receive by December 1, 2008.

ADDRESSES: We invite you to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E-Mail: Trent.Rogers@wdc.usda.gov*.
- *Fax:* (202) 720–6797.
- *Mail:* Director, Loan Making Division, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522.
- *Hand Delivery or Courier:* Deliver comments to Farm Service Agency, Loan Making Division, 1280 Maryland Ave., SW., Suite 240, Washington, DC 20024.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, Loan Making Division, Farm Services Agency, USDA, Suite 240, 1280 Maryland Ave., SW., Washington, DC 20024, between 8 a.m. and 4:30 p.m., except holidays.

FOR FURTHER INFORMATION CONTACT: Trent Rogers, Senior Loan Officer, Loan Making Division, Farm Service Agency; *telephone:* (202) 720–3889; *facsimile:* (202) 720–6797; *e-mail: Trent.Rogers@wdc.usda.gov*. Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

FSA guaranteed loans are a means of providing credit to farmers whose financial risk exceeds a level acceptable to commercial lenders. The guarantee reduces the lender's risk of default and loss, and thus the lender's credit cost. FSA believes that part of the intent of the program is for the borrower to receive the benefit of the reduction in the lender's credit cost in the form of a lower interest rate.

The existing regulation, 7 CFR 762.124(a)(3), limits the interest rate that a lender may charge guaranteed loan customers to a rate that does not exceed the rate charged to its ''average agricultural loan customers'' as defined in § 761.2. Currently, 7 CFR 762.124(a)(2) states that variable rates, if used, may change according to the normal practices of the lender for its average agricultural loan customer, but the frequency of change must be specific in the loan instrument. Some lenders have indicated that the term ''average agricultural loan customer'' is overly vague and have encouraged the agency to review its current interest rate policy. FSA proposes to clarify this section of the regulations to simplify compliance for stakeholders by setting a maximum rate based on certain widely published indices, while permitting the continued use of risk-based pricing models for lenders that prefer that approach.

The agriculture credit industry continues to undergo rapid transformation in response to the impact of technology and globalization of financial markets. FSA's current interest rate policies that are tied to the rate of an average customer are no longer consistent with industry pricing practices that generally consider the anticipated risks, costs, market competition, and terms of the loan or with the practices of other government agencies that administer similar programs. For example, the Small Business Administration has imposed rate ceilings which are linked to the ''prime'' rate or other index, depending on loan size, terms, and rate structure.

FSA believes that the FSA guarantee compensates the lender for much of the lender's risk of loss and that the interest rate charged by the lender to the producer should reflect that reduced risk. The changes proposed are consistent with that policy. In this rule FSA is proposing to eliminate the term ''average agricultural loan customer'' from 7 CFR 762.124(a)(2) and (3). FSA proposes new interest rate limits based on widely recognized indices, which will provide simple, clear limits rather than an ''average'' customer. For lenders who use a formal written risk-based pricing model for loans, the option to use the rate charged to moderate risk borrowers will still be included in the regulation.

FSA has selected the indices that it believes most accurately represent current rates. FSA has conducted an analysis of its guarantee portfolio and the rates lenders have charged their agricultural loan customers since 1999 in order to identify a correlation between these rates and a published index. That analysis indicated that the 10-year Treasury note rate was the index that most closely tracked farm real estate loans and Wall Street Journal prime was the index that most closely tracked short and intermediate term loans. The rate for 10 year Treasury notes is the yield on 10 year Treasury notes issued by the U.S. Department of the Treasury through the Bureau of Public Debt. The Wall Street Journal prime is the rate that at least 23 of the 30 largest U.S. banks charge for corporate loans, as published in the print edition of the Wall Street Journal. It is sometimes called the New York Prime rate.

The average rate charged on guaranteed Farm Ownership (FO) loans

since 1999 was 291 basis points (2.91 percent) over the 10-year Treasury rate. FSA proposes to limit the interest rate charged on guaranteed FO loans to no more than 350 basis points (3.5 percent) over the 10-year Treasury rate. Of the FO loans made since 1999, most would have met this interest rate limit, had it been in effect.

The average rate charged on guaranteed Operating Loans (OL) during the same time period was New York Prime plus 195 basis points (1.95 percent). FSA proposes to limit the guaranteed OL interest rate to no more than 250 basis points (2.5 percent) over the New York Prime rate. Had the proposed interest rate limit been in effect, most of the guaranteed OLs made since 1999 would have met this limit. These limits will apply to both fixed and variable rate guaranteed loans and lines of credit.

FSA realizes that financial markets can be very volatile and that lenders use various methodologies to manage their funding sources. This proposal does not require that the lender tie its guaranteed loan interest rates to these indices, nor does it require that the rate remain below these maximums throughout the term of the loan. It only sets the maximum rate that may be charged to the customer at the time of loan origination. In addition, to ensure that the benefit of the guarantee is passed on to borrowers in financial distress, these interest rate limits will apply to guaranteed loans at such time that they are restructured, too. FSA is specifically requesting comments on the suitability of using these indices or recommendations for another index, such as a London Inter Bank Offered Rate (known as LIBOR), or the Farmer Mac II cost of funds index or alternative methodologies for setting maximum interest rates.

FSA also realizes that some lenders have well developed risk based pricing models and are able to document how the interest rate on a guaranteed loan reflects the reduced risk of loss due to the guarantee. FSA is proposing to continue to permit such lenders to price guaranteed loans at a rate not exceeding the rate charged to their typical, moderate risk agricultural loan customer. The rate charged this customer would be limited to no more than the highest interest rate for the tier of the lender's risk rating matrix that reflects moderate risk. This would typically be the lender's middle tier, or for those lenders with an even number of tiers, a rate no higher than an average of the lender's two middle tiers. If such tier had a range of interest rates, the maximum rate permitted would be the highest rate for that tier. Specific comments are requested to further define this moderate risk agricultural loan rate. The lender will be required to provide the Agency with their pricing model.

Again, FSA is inviting comments that will address the indices to be used, as well as the maximum yield spreads. FSA is attempting to adhere to current lending standards, propose changes that will provide clear and straightforward guidance for lenders to improve lender compliance, allow guaranteed loan borrowers to receive the benefit resulting from the reduced risk of loss with a guarantee, and to promote active competition among lenders. FSA proposes to reserve the right to change the maximum rates on a temporary basis by **Federal Register** notice to ensure liquidity in the farm loan market, as determined in consultation with the Department of the Treasury, in response to conditions that result in large interest rate changes or term structure changes. Examples of these conditions include increased loan losses in the sector or significant changes in the yield curve.

Executive Order 12866

This rule has been designated as not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, FSA certifies that there would not be a significant economic impact on a substantial number of small entities. This rule is not expected to change the ability of applicants, borrowers, or lenders to receive FSA guaranteed loans, and would not increase the costs of compliance with the program. Further, all applicants or borrowers affected by this change are small, but no lenders are considered small entities. Changes will be applied to all affected entities equally, however, without regard to their size.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12372

These regulations are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, on Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. Generally, all administrative appeal provisions, including those published at 7 CFR part 11, must be exhausted before any action for judicial review may be brought in connection with the matters that are the subject of this rule.

Environmental Evaluation

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that this rule will not have a significant impact on the quality of the human environment either individually or cumulatively and therefore is categorically excluded and not subject to environmental assessments or environmental impact statements in accordance with 7 CFR 1940.310(e)(3).

Paperwork Reduction Act of 1995

The information collections to which this rule applies have been reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), approved, and assigned OMB control number 0560–0155. This rule involves no change to the currently approved collection of information.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 762

Agriculture, Credit, Loan programs—agriculture, Grant programs—agriculture, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR parts 761 and 762 are proposed to be amended as follows:

PART 761—GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 761.2 [Amended]

2. In § 761.2(b), remove the definition of ''average agricultural loan customer.''

PART 762—GUARANTEED FARM LOANS

3. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

4. Amend § 762.124 by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 762.124 Interest rate, terms, charges, and fees.

(a) * * *

(2) If a variable rate is used, it must be tied to an index or rate specifically agreed to between the lender and borrower in the loan instruments and the rate adjustments must be in accordance with normal practices of the lender for unguaranteed loans. Upon request, the lender must provide the Agency with copies of written rate adjustment practices.

(3) At loan closing and at the time of loan restructuring, the interest rate on the guaranteed portion and the unguaranteed portion of a fixed or variable rate loan may not exceed the following, as applicable:

(i) For lenders utilizing a pricing model based on loan risk, the highest interest rate for tier of the lender's risk rating matrix that reflects moderate risk. The lender must provide the Agency with this pricing model.

(ii) For lenders without a risk based pricing model, the 10-year Treasury rate plus 350 basis points for FO and the New York Prime (as published in the Wall Street Journal) plus 250 basis points for OL. In the event of extraordinary conditions resulting in large interest rate changes or term structure changes, the Agency may temporarily set a different maximum rate under this paragraph as determined in consultation with the Department of the Treasury; and

* * * * *

5. Amend § 762.150 by revising paragraph (g) to read as follows:

§ 762.150 Interest Assistance Program.

* * * * *

(g) *Rate of Interest.* The lender interest rate will be set according to § 762.124(a).

* * * * *

Signed at Washington, DC, on September 24, 2008.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E8–22871 Filed 9–29–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2008–0014]

RIN 1557–AD13

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1329]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AD32

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. OTS–2008–0010]

RIN 1550–AC22

Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Deduction of Goodwill Net of Associated Deferred Tax Liability

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are proposing to permit banks, bank holding companies, and savings associations (collectively, banking organizations) to reduce the amount of goodwill that a banking organization must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. The proposed change would effectively reduce the amount of goodwill that a banking organization must deduct from tier 1 capital and would reflect a banking organization's maximum exposure to loss in the event that such goodwill is impaired or derecognized for financial reporting purposes.

DATES: Comments must be received on or before October 30, 2008.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title ''Capital Adequacy Guidelines; Deduction of Goodwill Net of Associated Deferred Tax Liability'' 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–2008–0014'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. 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 Number OCC–2008–0014'' 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 notice of proposed rulemaking 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 Document 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–2008–0014'' 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.

Board: You may submit comments, identified by Docket No. R–1329, by any of the following methods:

• *Agency Web Site: http://www.Federalreserve.gov*. Follow the instructions for submitting comments at *http://www.Federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

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

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

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

All public comments are available from the Board's Web site at *http://www.Federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW., Washington, DC) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/propose.html*.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

• *E-mail: comments@FDIC.gov*.

Instructions: Comments submitted must include ''FDIC'' and ''RIN # 3064–AD32.'' Comments received will be posted generally without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

OTS: You may submit comments, identified by OTS–2008–0010 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 ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2008–0010'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. 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 address: regs.comments@ots.treas.gov*. Please include OTS–2008–0010 in the subject line of the message and include your name and telephone number in the message.

• *Fax:* (202) 906–6518.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0010.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, OTS–2008–0010.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/Supervision&Legal.Laws&Regulations*, including any personal information provided. 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 could be considered confidential or inappropriate for public disclosure.

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

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule

appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Paul Podgorski, Risk Expert, Capital Policy (202–874–4755); or Jean Campbell, Senior Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division (202–874–5090).

Board: Barbara Bouchard, Associate Director (202–452–3072 or *barbara.bouchard@frb.gov*), Mary Frances Monroe, Manager (202–452–5231 or *mary.f.monroe@frb.gov*), David Snyder, Supervisory Financial Analyst (202–728–5893 or *david.snyder@frb.gov*), Division of Banking Supervision and Regulation; or Mark Van Der Weide, Assistant General Counsel (202–452–2263 or *mark.vanderweide@frb.gov*) or Dinah Knight, Senior Attorney (202–452–3838 or *dinah.r.knight@frb.gov*), Legal Division. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202–263–4869.

FDIC: Christine M. Bouvier, Senior Policy Analyst (Bank Accounting) (202–898–7289), Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection; Nancy Hunt, Senior Policy Analyst (202–898–6643), Capital Markets Branch, Division of Supervision and Consumer Protection; Mark Handzlik, Senior Attorney (202–898–3990), or Michael Phillips, Counsel (202–898–3581), Supervision Branch, Legal Division.

OTS: Christine A. Smith, Project Manager, Capital Policy (202–906–5740); Marvin Shaw, Senior Attorney, Regulations and Legislation (202–906–6639); Patricia M. Hildebrand, Senior Policy Accountant, Accounting (202–906–7048); or Craig Phillips, Senior Policy Accounting Fellow, Accounting (202–906–5628).

SUPPLEMENTARY INFORMATION:

Proposed Capital Treatment for Goodwill Arising From a Taxable Business Combination

Under the Agencies' existing regulatory capital rules, a banking organization [1] must deduct certain assets from tier 1 capital.[2] A banking organization is permitted to net any associated deferred tax liability against some of those assets prior to deduction from tier 1 capital. Included among those assets are certain intangible assets arising from a nontaxable business combination. Such netting generally is not permitted for goodwill and other intangible assets arising from a taxable business combination. In these cases, the full or gross carrying amount of the asset is deducted.

Statement of Financial Accounting Standards No. 141, *Business Combinations* (FAS 141), requires that all business combinations be accounted for using the purchase method of accounting for financial reporting purposes under generally accepted accounting principles (GAAP).[3] FAS 141 also requires that the acquiring entity assign the cost of the acquired entity to each identifiable asset acquired and liability assumed. The amounts assigned are based generally upon the fair values of such assets and liabilities at the acquisition date. If the cost of the acquired entity exceeds the net of the amounts so assigned, the acquiring entity must recognize the excess amount as goodwill.

Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (FAS 142), prohibits the amortization of goodwill for financial reporting purposes under GAAP and requires periodic testing of the carrying amount of goodwill for impairment. However, a banking organization generally amortizes goodwill for tax purposes. This difference in treatment generally results in the recognition of a deferred tax liability under GAAP. The deferred tax liability increases over time and is reflected in corresponding reductions in earnings for financial reporting purposes until the goodwill has been fully amortized for tax purposes. The deferred tax liability generally is not reduced or reversed for financial reporting purposes unless the associated goodwill is written down upon a finding of impairment, or is otherwise derecognized.

The Agencies have received requests from several banking organizations to permit the amount of goodwill arising from a taxable business combination that must be deducted from tier 1 capital to be reduced by any associated deferred tax liability. The Agencies believe that this treatment would appropriately reflect a banking organization's maximum exposure to loss if the goodwill becomes impaired or is derecognized under GAAP.

Accordingly, the Agencies are proposing to amend their respective capital rules to permit a banking organization to reduce the amount of goodwill it must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. However, a banking organization that reduces the amount of goodwill deducted from tier 1 capital by the amount of the associated deferred tax liability would not be permitted to net this deferred tax liability against deferred tax assets when determining regulatory capital limitations on deferred tax assets. The proposed change would permit a banking organization to effectively reduce its regulatory capital deduction for goodwill to an amount equal to the maximum regulatory capital reduction that could occur as a result of the goodwill becoming completely impaired or derecognized. This would increase a banking organization's tier 1 capital, which is used to determine the banking organization's leverage ratio and risk-based capital ratios.

For example, assume that goodwill in the amount of $9,000 arises from a taxable business combination. For income tax purposes, this goodwill is amortized over 15 years at a rate of $600 per year ($9,000/15 years). However, the banking organization cannot recognize the $600 annual tax deduction for goodwill amortization in current income for financial reporting purposes. Assuming an income tax rate of 30 percent, each year the banking organization would have an income tax reduction of $180 ($600 × 30%) and would recognize this amount as a deferred tax liability. Under GAAP, at the end of the first year, the banking organization would report a deferred tax liability of $180. At the end of the 15-year tax amortization period, it would report a cumulative deferred tax liability of $2,700 ($180 × 15 years).[4]

---

[1] Unless otherwise indicated, the term ''banking organization'' includes banks, savings associations, and bank holding companies (BHCs). The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Board.

[2] See the Agencies' capital rules for more detail on what assets are required to be deducted from regulatory capital and how these deductions are calculated. See 12 CFR part 3 (national banks); 12 CFR part 208 (state member banks); 12 CFR part 225 (bank holding companies); 12 CFR part 325 (state nonmember banks); and 12 CFR part 567 (savings associations). This proposal is focused on the deduction of goodwill from tier 1 capital.

[3] Under FAS 141, application of the purchase method to combinations between mutual institutions was deferred, pending the issuance of interpretive guidance. A revised statement issued in December 2007, FAS 141(R), supersedes FAS 141 for financial reporting years starting after December 15, 2008. The revisions to FAS 141 incorporated in FAS 141(R) do not conflict with this proposal. FAS 141(R) retains the fundamental requirements in FAS 141 that the acquisition method of accounting (which FAS 141 called the ''purchase method'') be used for all business combinations and extends these requirements to combinations between two or more mutual institutions. This proposal uses the term ''purchase method'' in order to be consistent with the current terminology under GAAP.

[4] This example assumes that, throughout the tax amortization period, there is no impairment or

Under the Agencies' existing regulatory capital rules, the full carrying amount of goodwill ($9,000) is deducted from tier 1 capital. However, since the amortization of this asset for income tax purposes reduces income taxes by $2,700 over the 15-year period, the maximum amount of reduction in tier 1 capital that the banking organization could experience in the event of total impairment of the goodwill at the end of the 15-year period is $6,300 ($9,000 minus $2,700), not $9,000. Under this proposed rule, the total deduction from tier 1 capital at the end of the first year would be $8,820 ($9,000 minus $180) and, at the end of the fifteenth year, the deduction from tier 1 capital would be $6,300.

The Agencies request comment on all aspects of this proposal. Specifically, the Agencies request comment on the impact that the proposed treatment could have on a banking organization's regulatory capital ratios.

The Agencies are considering for purposes of any final rule whether they should extend the treatment proposed for goodwill to other intangible assets acquired in a taxable business combination that currently are not deductible from tier 1 capital net of associated deferred tax liabilities.[5] Accordingly, the Agencies request comment on whether they should permit any additional intangible assets to be deducted from tier 1 capital net of associated deferred tax liabilities. For such assets, the Agencies request information regarding the type of intangible asset and an estimate of the potential impact on banking organizations' capital ratios from extending this proposal to cover those assets, as well as any other relevant data or pertinent information.

Other Revisions

The OCC is proposing to consolidate the various provisions permitting a bank to deduct assets from tier 1 capital on a basis net of any associated deferred tax liability together in one section of the regulatory text to make it easier to locate. In addition, the current regulatory text's special treatment of intangible assets acquired due to a nontaxable purchase business combination exempts purchased mortgage servicing rights and purchased credit card relationships but does not make clear whether those assets may be netted, and also does not make clear whether intangible assets acquired in a taxable purchase business combination may be netted.

The OCC is clarifying the appropriate treatment of disallowed servicing assets and purchased credit card relationships to be as follows: (1) Disallowed servicing assets may be deducted net of any associated deferred tax liability, regardless of the method by which the bank acquired such assets; and (2) servicing assets that are includable in tier 1 capital and purchased credit card relationships may not be deducted net of any associated deferred tax liability, regardless of the method by which the bank acquired such assets. The OCC is proposing these changes for the following reasons. The term ''purchased mortgage servicing rights'' is obsolete under GAAP. The OCC is replacing this term with the broader term ''servicing assets'' and making other clarifying changes to more accurately reflect the OCC's existing interpretation of the current regulatory text.

The OCC also is proposing technical changes to its regulatory capital rules. The OCC is proposing to amend the definition of goodwill to conform to FAS 141 and FAS 142. These changes are non-substantive and are being made because portions of the existing regulatory text became obsolete when FAS 141 made application of the purchase method of accounting for business combinations mandatory. In addition, the OCC is proposing technical amendments to revise cross references and other miscellaneous changes.

The Board also is proposing technical changes to conform the definition of goodwill in its regulatory capital rules to GAAP, in particular, to the terminology used in FAS 141 and FAS 142.[6] These changes are non-substantive and are being made because parts of the existing regulatory text became obsolete when FAS 141 made application of the purchase method of accounting for business combinations mandatory. Further, the Board is proposing to amend Appendix A to 12 CFR part 225 to remove obsolete text that relates to goodwill recognized by a BHC prior to December 31, 1992.

The OTS is proposing four changes to its capital regulations. First, OTS is proposing a change to amend its definition of ''intangible assets'' in 12 CFR 567.1 to delete obsolete text that excluded servicing assets from the definition of intangible assets, and to add regulatory text to the definition to include servicing assets as intangible assets. Second, OTS is proposing a change to its definition of ''intangible assets'' in 12 CFR 567.9 that would reference servicing assets as intangible assets according to 12 CFR 567.1. Third, OTS is proposing a change to conform its regulatory text to that of the other Agencies by adding regulatory text that provides for netting a deferred tax liability specifically related to an intangible asset (other than disallowed servicing assets that are already permitted to be deducted on a basis net of associated deferred tax liabilities, and purchased credit card relationships that may not be deducted on a basis net of associated deferred tax liabilities) arising from a nontaxable business combination against that intangible asset. Fourth, OTS is proposing other regulatory rule text changes that will conform its regulatory text to that of the other Agencies by adding language to its rules addressing the regulatory capital limitation on deferred tax assets.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[7] The RFA provides that an agency is not required to prepare and publish an initial regulatory flexibility analysis if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[8]

Under regulations issued by the Small Business Administration,[9] a small entity includes a bank holding company, commercial bank, or savings association with assets of $175 million or less (collectively, small banking organizations).[10] The proposed rule would permit a banking organization to compute its deduction from regulatory capital of goodwill net of any associated deferred tax liability. The Agencies believe that this proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule is elective and, thus, does not require a bank to

derecognition of the goodwill and there is no change in the income tax rate.

[5] As discussed above, under the Agencies' existing regulatory capital rules, the full amount of any intangible asset acquired in a taxable business combination generally is deducted from tier 1 capital, without netting of any associated deferred tax liability.

[6] The FDIC's and OTS's regulatory capital rules do not include a definition of goodwill. Therefore, this aspect of the proposal would not affect the FDIC's or OTS's regulations.

[7] See 5 U.S.C. 603(a).

[8] See 5 U.S.C. 605(b).

[9] See 13 CFR 121.201.

[10] As of December 31, 2007, there were approximately 2,785 small bank holding companies, 932 small national banks, 467 small state member banks, 3,274 small state nonmember banks, and 428 small savings associations.

compute its deduction from regulatory capital of goodwill net of any associated deferred tax liability. Each agency certifies that the proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agencies reviewed the proposed rule regarding the deduction of goodwill net of associated deferred tax liability as required by the Office of Management and Budget.[11] No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule. However, implementation of this proposed rule would necessitate clarifications to the Agencies' quarterly regulatory reports [12] to reflect the proposed change in a banking organization's tier 1 capital.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the Agencies have sought to present the proposed rule in a simple and straightforward manner. The Agencies invite comment on whether the Agencies could take additional steps to make the proposed rule easier to understand.

OCC and OTS Executive Order 12866 Determinations

Executive Order 12866 requires Federal agencies to prepare a regulatory impact analysis for agency actions that are found to be significant regulatory actions. Significant regulatory actions include, among other things, rulemakings that have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The OCC and OTS each have determined that its portion of the proposed rule is not a significant regulatory action.

OCC and OTS Executive Order 13132 Determinations

The OCC and OTS each determined that its portion of the proposed rulemaking does not have any federalism implications for purposes of Executive Order 13132.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes 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 (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each have determined that its proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $133 million or more. Accordingly, neither OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Accounting, Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Administrative practice and procedure, Banks, Banking, Capital, Reporting and recordkeeping requirements, Risk.

12 CFR Part 225

Accounting, Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Reporting and recordkeeping requirements, Risk.

12 CFR Part 325

Accounting, Banks, Banking, Administrative practice and procedure, Capital, Reporting and recordkeeping requirements, Risk.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907 and 3909.

2. In appendix A to part 3, Section 1 is amended by:

a. Removing, in paragraph (c)(1), the third sentence, the phrase ''section 1(c)(8)'' and by adding in lieu thereof the phrase ''section 1(c)(10)''; and

b. Revising paragraph (c)(17) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(17) *Goodwill* is an intangible asset that represents the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed.

* * * * *

3. In appendix A to part 3, Section 2 is amended by:

a. Removing, in paragraphs (c) introductory text and (c)(1) introductory text, the word ''items'', and by adding in lieu thereof the word ''assets'';

b. Removing, in paragraph (c)(1)(iii), the phrase ''section 2(c)(3)'' and by adding in lieu thereof the phrase ''sections 2(c)(3) and (2)(c)(6)'';

c. Removing, in paragraph (c)(1)(iv), the phrase ''section 4(a)(3)'' and by adding in lieu thereof the phrase ''section 4(a)(2)'';

d. Removing, in footnote 6, the phrase ''section 1(c)(14)'' and by adding in lieu thereof the phrase ''section 1(c)(18)'', and removing the phrase ''section 4(a)(3)'' and by adding in lieu thereof the phase ''section 4(a)(2)'';

e. Removing paragraph (c)(2)(iv);

f. Adding a heading to paragraph (c)(3)(i);

g. Removing paragraph (c)(3)(iii) and redesignating paragraph (c)(3)(iv) as paragraph (c)(3)(iii);

h. Removing paragraph (c)(4)(iii);

[11] See 44 U.S.C. 3506; 5 CFR 1320 Appendix A.1.

[12] Consolidated Reports of Condition and Income (Call Report) (OMB Nos. 7100–0036, 3064–0052, 1557–0081), Thrift Financial Report (TFR) (OMB No. 1550–0023), Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128).

i. Redesignating paragraph (c)(6) as paragraph (c)(7) and adding a new paragraph (c)(6) to read as follows; and

j. Revising the introductory text of newly designated paragraph (c)(7) by removing the word ''items'' and adding in lieu thereof the word ''assets''.

The revision and addition are set forth below.

Section 2. Components of Capital.

* * * * *

(c) * * *

(3) * * * (i) *Net unrealized gains and losses on available-for-sale securities.* * * *

* * * * *

(6) *Netting of Deferred Tax Liability.* (i) Banks may elect to deduct the following assets from Tier 1 capital on a basis that is net of any associated deferred tax liability:

(A) Goodwill;

(B) Intangible assets acquired due to a nontaxable purchase business combination, except banks may not elect to deduct from Tier 1 capital on a basis that is net of any associated deferred tax liability, regardless of the method by which they were acquired:

(*1*) Purchased credit card relationships; and

(*2*) Servicing assets that are includable in Tier 1 capital;

(C) Disallowed servicing assets;

(D) Disallowed credit-enhancing interest-only strips; and

(E) Nonfinancial equity investments, as defined in section 1(c)(1) of this appendix A.

(ii) Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income as calculated under section 2(c)(1)(iii) of this appendix A.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 92(a), 248(a), 248(c), 321–328a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, amend section II.B. by revising paragraphs 1.a., 1.e.iii., and 1.f. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. * * *

a. *Goodwill.* Goodwill is an intangible asset that represents the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed. Goodwill is deducted from the sum of core capital elements in determining Tier 1 capital.

* * * * *

e. * * *

iii. Banks may elect to deduct goodwill, disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, and disallowed credit-enhancing I/Os (both purchased and retained) on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

f. *Valuation.* Banks must review the book value of goodwill and other intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's goodwill, other intangible assets, or credit-enhancing I/Os.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

4. In appendix A to part 225, amend section II.B. by revising paragraphs 1.a., 1.e.iii, and 1.f. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. * * *

a. *Goodwill.* Goodwill is an intangible asset that represents the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed. Goodwill is deducted from the sum of core capital elements in determining tier 1 capital.

* * * * *

e. * * *

iii. Bank holding companies may elect to deduct goodwill, disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, and disallowed credit-enhancing I/Os (both purchased and retained) on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

f. *Valuation.* Bank holding companies must review the book value of goodwill and other intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank holding company's goodwill, other intangible assets, or credit-enhancing I/Os.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. Section 325.5 is amended by revising paragraph (g)(5) to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(g) * * *

(5) *Goodwill and other intangible assets.* This paragraph (g)(5) provides the capital treatment for intangible assets acquired in a nontaxable business combination, and goodwill acquired in a taxable business combination.

(i) *Intangible assets acquired in nontaxable purchase business combinations.* A deferred tax liability that is specifically related to an intangible asset (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships) acquired in a nontaxable purchase business combination may be netted against this intangible asset. Only the net amount of this intangible asset must be deducted from Tier 1 capital.

(ii) *Goodwill acquired in a taxable purchase business combination.* A deferred tax liability that is specifically related to goodwill acquired in a taxable purchase business combination may be netted against this goodwill. Only the net amount of this goodwill must be deducted from Tier 1 capital.

(iii) *Treatment of a netted deferred tax liability.* When a deferred tax liability is netted in accordance with paragraph (g)(5)(i) or (ii) of this section, the taxable temporary difference that gives rise to this deferred tax liability must be excluded from existing taxable temporary differences when determining the amount of deferred tax assets that are dependent upon future taxable income and calculating the maximum allowable amount of such assets.

(iv) *Valuation.* The FDIC in its discretion may require independent fair value estimates for goodwill and other intangible assets on a case-by-case basis where it is deemed appropriate for safety and soundness purposes.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the common preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising the definition for *intangible assets* to read as follows:

§ 567.1 Definitions.

* * * * *

Intangible assets. The term *intangible assets* means assets considered to be intangible assets under generally accepted accounting principles. These assets include, but are not limited to, goodwill, core deposit premiums, purchased credit card relationships, favorable leaseholds, and servicing assets (mortgage and non-mortgage). Interest-only strips receivable and other nonsecurity financial instruments are not intangible assets under this definition.

* * * * *

3. Section 567.5 is amended by adding new paragraph (a)(2)(vii) to read as follows:

§ 567.5 Components of capital.

* * * * *

(a) * * *

(2) * * *

(vii) Deferred tax assets that are not includable in core capital pursuant to § 567.12 of this part are deducted from assets and capital in computing core capital.

* * * * *

4. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital requirements.

* * * * *

(c) * * *

(1) Intangible assets (as defined in § 567.1) and credit enhancing interest-only strips not includable in tangible capital under § 567.12.

* * * * *

5. Section 567.12 is amended by:

a. Revising the heading and paragraphs (a) and (b)(3);

b. Adding paragraph (b)(5);

c. Revising paragraph (e)(3); and

d. Adding paragraph (h) to read as follows:

§ 567.12 Purchased credit card relationships, servicing assets, intangible assets (other than purchased credit card relationships and servicing assets), credit-enhancing interest-only strips, and deferred tax assets.

(a) *Scope.* This section prescribes the maximum amount of purchased credit card relationships, serving assets, intangible assets (other than purchased credit card relationships and servicing assets), credit-enhancing interest-only strips, and deferred tax assets that savings associations may include in calculating tangible and core capital.

(b) * * *

(3) Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships described in paragraph (b)(1) of this section, servicing assets described in paragraph (b)(2) of this section, and core deposit intangibles described in paragraph (g)(3) of this section, are deducted in computing tangible and core capital, subject to paragraph (e)(3)(ii) of this section.

* * * * *

(5) Deferred tax assets may be included (that is not deducted) in computing core capital subject to the restrictions of paragraph (h) of this section, and may be included in tangible capital in the same amount.

* * * * *

(e) * * *

(3) * * *

(i) For purposes of computing the limits and sublimits in paragraphs (e) and (h) of this section, core capital is computed before the deduction of disallowed servicing assets, disallowed purchased credit card relationships, disallowed credit-enhancing interest-only strips (purchased and retained), and disallowed deferred tax assets.

(ii) A savings association may elect to deduct the following items on a basis net of deferred tax liabilities:

(A) Disallowed servicing assets;

(B) Goodwill such that only the net amount must be deducted from Tier 1 capital;

(C) Disallowed credit-enhancing interest only strips (both purchased and retained); and

(D) Other intangible assets arising from non-taxable business combinations. A deferred tax liability that is specifically related to an intangible asset (other than purchased credit card relationships) arising from a nontaxable business combination may be netted against this intangible asset. The net amount of the intangible asset must be deducted from Tier 1 capital.

(iii) Deferred tax liabilities that are netted in accordance with paragraph (e)(3)(ii) of this section cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

* * * * *

(h) *Treatment of deferred tax assets.* For purposes of calculating Tier 1 capital under this part (but not for financial statement purposes) deferred tax assets are subject to the conditions, limitations, and restrictions described in this section.

(1) Deferred tax assets that are dependent upon future taxable income. These assets are:

(i) Deferred tax assets arising from deductible temporary differences that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related deferred tax effects are reported on the balance sheet) fully reverse at the calendar quarter-end date; and

(ii) Deferred tax assets arising from operating loss and tax credit carryforwards.

(2) Tier 1 capital limitations. (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on a projected future taxable income for that year; or

(B) Ten percent of the amount of Tier 1 capital that exists before the deduction of any disallowed servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital.

(iii) Notwithstanding paragraph (h)(2)(B)(ii) of this section, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a savings association that is part of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the association could reasonably expect to have refunded by its parent.

(3) Projected future taxable income. Projected future taxable income should not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim calendar quarter-end date rather than preparing a new projection each quarter.

(4) Unrealized holding *gains and losses on available-for-sale debt securities.* The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.

Dated: September 18, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 23, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 18th day of September 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 23, 2008.

By the Office of Thrift Supervision.

John Reich,

Director.

[FR Doc. E8–22741 Filed 9–29–08; 8:45 am]

BILLING CODE 4810–33–P (25%), 6210–01–P (25%), 6714–01–P (25%), 6720–01–P (25%)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1043; Directorate Identifier 2008–NM–036–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH Dornier Model 328–100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> During overhaul on a Dornier 328–100 landing gear unit, parts of the MLG (main landing gear) main body and trailing arm bushings have been found corroded. Investigation showed that over time, these bushings can migrate, creating the risk of corrosion in adjacent areas. Such corrosion, if not detected, could cause damage to the MLG, possibly resulting in MLG functional problems or failure.
>
> * * * * *

Functional problems or failure of the MLG could result in the inability of the MLG to extend or retract. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 30, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office 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 Operations 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98057–3356; telephone (425) 227–2125; 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–2008–1043; Directorate Identifier 2008–NM–036–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 based on 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0009, dated January 11, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During overhaul on a Dornier 328–100 landing gear unit, parts of the MLG (main landing gear) main body and trailing arm bushings have been found corroded. Investigation showed that over time, these bushings can migrate, creating the risk of corrosion in adjacent areas. Such corrosion, if not detected, could cause damage to the MLG, possibly resulting in MLG functional problems or failure.
>
> Based on these findings, the existing mandatory retrofit limitation (as required by Airworthiness Limitations Document under Section E ''Mandatory Retrofit Items'' since 16 September 1998) for the MLG bushings at 15,000 FC (flight cycles) has been amended with '' * * * or 6 calendar years time-in-service (TIS), whichever occurs first''.
>
> For the reasons described above, this [EASA] Airworthiness Directive requires the implementation of the revised mandatory retrofit limitation and modification of MLG bushings that have exceeded the new limit.

Functional problems or failure of the MLG could result in the inability of the MLG to extend or retract. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

328 Support Services GmbH has issued Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Dornier 328 Temporary Revision (TR) ALD–084, dated November 7, 2005, to the Dornier 328 Airworthiness Limitations Document. Messier-Dowty has issued Service Bulletin 800–32–014, Revision 1, dated July 19, 1999. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry. We also estimate that it would take about 28 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $10,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. 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 proposed AD on U.S. operators to be $159,120, or $12,240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

328′ Support Services GmbH (Formerly, AvCraft Aerospace GmbH, formerly Fairchild Dornier GmbH, formerly Dornier Luftfahrt GmbH): Docket No. FAA–2008–1043; Directorate Identifier 2008–NM–036–AD.

Comments Due Date

(a) We must receive comments by October 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 328 Support Services GmbH Dornier Model 328–100 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

During overhaul on a Dornier 328–100 landing gear unit, parts of the MLG (main landing gear) main body and trailing arm bushings have been found corroded. Investigation showed that over time, these bushings can migrate, creating the risk of corrosion in adjacent areas. Such corrosion, if not detected, could cause damage to the MLG, possibly resulting in MLG functional problems or failure.

Based on these findings, the existing mandatory retrofit limitation (as required by Airworthiness Limitations Document under Section E ''Mandatory Retrofit Items'' since 16 September 1998) for the MLG bushings at 15,000 FC (flight cycles) has been amended with ''* * * or 6 calendar years time-in-service (TIS), whichever occurs first''.

For the reasons described above, this [EASA] Airworthiness Directive requires the implementation of the revised mandatory retrofit limitation and modification of MLG bushings that have exceeded the new limit.

Functional problems or failure of the MLG could result in the inability of the MLG to extend or retract.

Actions and Compliance

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

(1) Modify the MLG main body and trailing arm bushings at the applicable time specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, or within 12 months after the effective date of this AD, whichever occurs later. Do the modification in accordance with the instructions of Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999.

(i) For airplanes on which the bushings have not been replaced as of the effective date of this AD: Before the MLG accumulates 15,000 flight cycles or 6 years, whichever occurs first.

(ii) For airplanes on which the bushings have been replaced as of the effective date of this AD: Before the MLG exceeds 15,000 flight cycles or 6 years after replacement of the bushings, whichever occurs first.

(2) Within 1 month after the effective date of this AD: Revise the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness by incorporating the information in Dornier 328 Temporary Revision (TR) ALD–084, dated November 7, 2005, into Section E, ''Mandatory Retrofit Items'' of the Dornier 328 Airworthiness Limitations Document (ALD).

Note 1: The actions required by paragraph (f)(2) of this AD may be done by inserting a copy of Dornier 328 TR ALD–084 into Section E of the Dornier 328 ALD.

(3) After doing the replacement required by paragraph (f)(1) of this AD, no person may install, on any airplane, a MLG unit as a replacement part, unless it has been modified in accordance with paragraph (f)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0009, dated January 11, 2008; Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999; Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Dornier 328 TR ALD–084, dated November 7, 2005, to the Dornier 328 Airworthiness Limitations Document; for related information.

Issued in Renton, Washington, on September 20, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22907 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1044; Directorate Identifier 2008–NM–095–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Several landing gear emergency extension valves have been found seized * * *. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency.

This malfunction could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 30, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office 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 Operations 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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–2008–1044; Directorate Identifier 2008–NM–095–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 based on 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0054, dated March 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several landing gear emergency extension valves have been found seized when performing checks according to the SAAB 340 Maintenance Review Board (MRB) Report, Section F (Airworthiness Limitation Section) task number 323106. The valves have seized due to lack of internal lubrication. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency.
>
> Because the valve lubrication performance is dependant on calendar time since last valve operation, SAAB has revised the check to cycle the emergency release handle 5 times and amended the interval in MRB section F from 5,000 FH [flight hours] to every 2 years.
>
> For the reasons described above, this Airworthiness Directive (AD) requires a functional check [for discrepancies, (e.g., landing gear does not extend, does not lock in down position)] of the landing gear emergency extension valve at the newly established intervals.

Malfunction of the landing gear release could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. The corrective action for any discrepancy that is found is repair using a method approved by either the FAA or the EASA (or its delegated agent). You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

SAAB has issued Service Bulletin 340–32–136, dated January 9, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 218 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $69,760, or $320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket No. FAA–2008–1044; Directorate Identifier 2008–NM–095–AD.

Comments Due Date

(a) We must receive comments by October 30, 2008.

Affected ADs

(b) None.

Applicability

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

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

Several landing gear emergency extension valves have been found seized when performing checks according to the SAAB 340 Maintenance Review Board (MRB) Report, Section F (Airworthiness Limitation Section) task number 323106. The valves have seized due to lack of internal lubrication. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency.

Because the valve lubrication performance is dependant on calendar time since last valve operation, SAAB has revised the check to cycle the emergency release handle 5 times and amended the interval in MRB section F from 5,000 FH [flight hours] to every 2 years.

For the reasons described above, this Airworthiness Directive (AD) requires a functional check [for discrepancies, (e.g., landing gear does not extend, does not lock in down position)] of the landing gear emergency extension valve at the newly established intervals.

Malfunction of the landing gear release could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. The corrective action for any discrepancy that is found is repair using a method approved by either the FAA or the European Aviation Safety Agency (EASA) (or its delegated agent).

Actions and Compliance

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

(1) Within 6 months after the effective date of this AD, do a functional check of the landing gear emergency extension valve in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–136, dated January 9, 2008. Repeat the functional check thereafter at intervals not to exceed 24 months.

(2) If any discrepancy is found during any functional check required by paragraph (f)(1) of this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Although the MCAI includes a note that allows the option of the repetitive inspections to be accomplished in accordance with SAAB 340 MRB Report, Section F, Revision 6, task number 323106, this AD does not include that option. That document is not yet available.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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: Shahrahm Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0054 dated March 5, 2008, and SAAB Service Bulletin 340–32–136, dated January 9, 2008, for related information.

Issued in Renton, Washington, on September 20, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22915 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505—AB92

Terrorism Risk Insurance Program; Cap on Annual Liability

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (''Treasury'') is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (''TRIA'' or ''the Act''), as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (''Reauthorization Act''). The Act established a temporary Terrorism Risk Insurance Program (''TRIP'' or ''Program'') under which the Federal Government would share with commercial property and casualty insurers the risk of insured losses from certified acts of terrorism. The Reauthorization Act has now extended the Program until December 31, 2014. This proposed rule is the latest in a series of regulations Treasury has issued to implement the Act. The proposed rule incorporates and implements statutory requirements in section 103(e) of the Act, as amended by the Reauthorization Act, for capping the annual liability for insured losses at $100 billion. In particular, the proposed rule describes how Treasury intends to determine the *pro rata* share of insured losses under the Program when insured losses would otherwise exceed the cap on annual liability. The rule builds upon previous rules issued by Treasury.

DATES: Written comments must be submitted on or before October 30, 2008.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance

Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''TRIA Cap on Annual Liability Proposed Rule Comments.'' Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments will be available for public inspection on the Federal eRulemaking Portal and by appointment at the TRIP Office. To make appointments, call (202) 622–6770 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Deputy Director, Terrorism Risk Insurance Program, (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism. The Act authorizes Treasury to administer and implement the Program, including the issuance of regulations and procedures. The Program provides a federal backstop for insured losses from an act of terrorism. Section 103(e) of the Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges. The Act also contains provisions designed to manage litigation arising from or relating to a certified act of terrorism.

The Program originally was to expire on December 31, 2005; however, on December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144, 119 Stat. 2660), which extended the Program through December 31, 2007. On December 26, 2007, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160, 121 Stat. 1839), extending the Program through December 31, 2014.

The Reauthorization Act, among other Program changes, revised the provisions of the Act with regard to the cap on annual liability for insured losses of $100 billion. Previously, section 103(e)(3) stated that Congress would determine the procedures for and the source of any payments for insured losses in excess of the cap. This was deleted. Instead, this section now requires the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed the cap. TRIA, as amended by the Reauthorization Act, also requires the Secretary to determine the *pro rata* share of insured losses to be paid by each insurer incurring losses under the Program when insured losses exceed the cap, and to issue regulations for carrying this out.

II. Previous Rulemaking

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury has issued interim guidance for reference until issuance of superseding regulation. Rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, can be found in Subparts A, B, and C of 31 CFR Part 50. Treasury's rules applying provisions of the Act to State residual market insurance entities and State workers' compensation funds are at Subpart D of 31 CFR Part 50. Rules setting forth procedures for filing claims for payment of the Federal share of compensation for insured losses are at Subpart F of 31 CFR Part 50. Subpart G of 31 CFR Part 50 contains rules on audit and recordkeeping requirements for insurers, while Subpart I of 31 CFR Part 50 contains Treasury's rules implementing the litigation management provisions of section 107 of the Act.

III. The Proposed Rule

This proposed rule would add a Subpart J to part 50, which comprises Treasury's regulations implementing the Act. It also proposes to amend § 50.53 of Subpart F.

A. Overview

Generally, section 103(e)(2), as amended, provides that, notwithstanding subsection (e)(1) regarding the Federal share of compensation or any other provision of Federal or State law, the Secretary shall not make any payments for any portion of insured losses in excess of the cap on annual liability of $100 billion. Furthermore, no insurer that has met its insurer deductible shall be liable for any portion of insured losses in excess of the cap. For these purposes, the Secretary determines the *pro rata* share of insured losses to be paid by each insurer incurring losses under the Program. Section 103(e)(2) further provides that no insurer may be required to make any payment for insured losses in excess of its deductible combined with its share of insured losses above its deductible. The Reauthorization Act also added a provision (Section 103(b)(3) of TRIA) requiring insurers to make a disclosure to policyholders of the existence of the $100 billion cap under subsection (e)(2).

The cap on insured losses may be reached as a result of a single act of terrorism, or as a result of multiple smaller acts. Either case would represent an unprecedented level of losses and present many difficulties in assessment and projection of insured losses. The cap's impact on the Federal government's and insurer's liabilities, based on industry-wide insured losses, involves insurance contract issues not normally encountered in the insurance market. Examining different approaches to pro rating payments of insured losses within the cap, it is apparent that no alternative eliminates the potential for inequities in how insured losses are settled, mainly due to the timing of events and the timing of loss settlements.

In developing a proposed process, Treasury is guided by its authorities provided in the Act. Treasury is attempting, within these authorities, to reduce the potential for inequitable treatment of policyholders resulting from the timing of insured losses, the location of insured losses, or the particular insurer of the policyholder, while providing a process that is relatively easily understood and that is operationally reasonable to execute, control, and audit. The proration process must be established on a going forward basis so insureds that have already received payments from their insurers would not have to return any of those payments. The process must also be flexible enough to address changing circumstances presented by subsequent events or by the development of new, more accurate information regarding insured losses.

The proposed rule describes how Treasury would initially estimate whether the cap will be exceeded, the means by which Treasury would develop and maintain estimates for determining the *pro rata* share of insured losses to be paid, the factors

that would be considered in determining a *pro rata* percentage of the insured losses that are to be paid in order to stay within the cap, and the application of the *pro rata* percentage in paying insured losses. Treasury has consulted with the National Association of Insurance Commissioners in developing this rule. Treasury seeks comment on all aspects of the proposed rule and welcomes the submission of alternatives to the proposed process for prorating insured losses when aggregate insured losses would exceed the cap on annual liability.

B. Description of the Proposed Rule

The major provisions of the proposed rule are as follows:

1. Notice to Congress (§ 50.91)

Section 103(e)(3) of the Act requires the Secretary to provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100 billion. TRIA defines an ''act of terrorism,'' in part, as any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States. Treasury intends to meet this requirement within the designated time following the certification of an act of terrorism, although there may be significant challenges involved in obtaining data for such an estimate within the designated time. The first challenge could be restrictions on access to the affected areas that would hinder the ability of anyone to accurately assess losses. Additionally, from the Program's perspective, since the $100 billion cap applies only to insured losses, the distinction between estimation of insured and uninsured losses will be critical.

In determining initial estimates of insured losses, Treasury's preferred means of gathering information would be through contacting insurance industry statistical organizations such as the Property Claims Services of Insurance Services Office, Inc. To the extent that insurers are able to estimate their insured losses early on, aggregate loss information would become available through such industry sources. Supplemented with other information regarding insurer deductibles and expectations for insured losses that would emerge later, such as liability losses, this represents, we believe, the best source for an initial report as to whether the cap will be exceeded. Treasury is also exercising its own data call authority, which is further discussed in the description below for § 50.94 in the proposed rule. For the purposes of this initial reporting to Congress, however, a Treasury data call, separate from other industry efforts, may not be timely enough.

Treasury has also considered the utility of certain computer models to estimate initial insured losses. (This modeling has been developed as an industry tool for analyzing the terrorism risk for underwriting purposes.) While this may be of some value in making initial estimates, we have also been advised that the values for input parameters necessary for model accuracy for an actual terrorist event are not likely to be as readily available in the immediate aftermath as they are from natural hazard events such as hurricanes. This seems to limit the utility of this approach for purposes of the report to Congress.

Treasury may also look to Federal, state, and local sources of damage assessments in advance of any disaster response and recovery efforts. These will likely also be helpful, but, as discussed above, such overall estimates may not be refined enough for us to estimate the more limited insured losses of concern to the Program.

2. Determination of Pro Rata Share (§ 50.92)

Under the Reauthorization Act, the Secretary shall not make any payment for any portion of the amount of such insured losses that exceeds $100 billion; and no insurer that has met its deductible shall be liable for the payment of any portion of the amount of such insured losses that exceeds $100 billion. As previously noted, the timing of events and the timing of resulting loss payments have the potential for inequities that may be impossible to avoid completely. Treasury is proposing a rule that ensures fair and equal treatment of insurers, policyholders, and claimants, to the extent possible given the inequities inherent in the cap provisions of the Act and the possibility that proration may need to be implemented midway in the settlement of insured losses arising from a Program Year. Generally, Treasury's approach would be to establish any pro ration relatively conservatively when it is estimated that the cap will be reached, so that early payments are not inequitably higher than later payments, and so that, barring a subsequent act of terrorism, later refinements to the pro ration would allow additional payments to policyholders for prior settled losses. During a Program Year, until events have transpired that lead Treasury to believe that the cap could be reached, it would be our intention that no pro ration would be established.

The proposed rule includes a definition of ''*pro rata* loss percentage'' (''PRLP''). This would be the percentage determined by the Secretary to be applied against the amount that would otherwise be paid by an insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability. An insurer would apply the PRLP to compute the *pro rata* share of insured losses to be paid under an insurance policy.

Treasury has examined the issue of whether different lines of business or different types of insured losses should have different *pro rata* loss percentages applied. Given the inherent potential for inequities arising out of the timing and nature of multiple acts of terrorism that are the cause of insured losses, the difficulties in quickly estimating aggregate losses, as well as the difficulty in prioritizing certain insured losses over others, Treasury believes a single *pro rata* loss percentage should be used in determining the *pro rata* share of insured losses from all lines of business covered by the Program.

The proposed rule provides that if Treasury estimates that insured losses may exceed the cap on annual liability for a Program Year, then Treasury would determine an initial PRLP and an effective date for that PRLP. This percentage would be applied in determining insured loss payments for insured losses incurred during the subject Program Year, starting with the effective date until Treasury determines a revised PRLP. Considerations in establishing the PRLP are proposed to be: (1) Estimates of insured losses from insurance industry statistical organizations; (2) any data calls issued by Treasury; (3) expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase; (4) estimates of insured losses and expenses not included in available statistical reporting; and (5) such other factors as the Secretary considers important. Revisions to the PRLP would be based on the same considerations, as needed. Notices of the initial and any revised PRLP would be provided through the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

It will almost certainly be necessary to continue to update aggregate insured loss estimates, in light of more information regarding losses from events which have already occurred or

because of subsequent events. New and refined information may result in Treasury's determination of a new PRLP. In developing this proposed rule, Treasury contemplated including a schedule for updating estimates of aggregate insured losses. Because of the unique circumstances of any act of terrorism, we believe that it would be better to formulate a plan for updating this information when we know more about what has actually occurred.

Treasury needs information on unprorated insured losses in order to accurately determine an appropriate initial or subsequent PRLP. It is Treasury's understanding that as insured losses develop and are paid under a *pro rata* share calculation, insurer loss reserves generally will reflect the reduced payments expected to be made. For this reason, Treasury anticipates requiring, both for data call purposes discussed below, and for insurer claim submissions for the Federal share of compensation, the provision to Treasury of insured loss amount information that would reflect the unprorated amounts of both settlements and losses yet to be paid in the future.

Treasury is concerned that there could be circumstances where we estimate that the cap on annual liability will be exceeded, but there is not yet adequate knowledge of insured losses with which to determine a PRLP. Allowing payments for early insured losses to continue without proration appears to be inequitable to those coming in later, for which the *pro rata* share calculation would have to be that much more severe. Treasury is proposing in this rule that in such a circumstance it would call a brief hiatus in insurer loss payments of up to two weeks. During this time Treasury would develop a PRLP as quickly as possible. During this hiatus, insurers could still make payments, but with the understanding that the PRLP would be effective retroactively to the start of the hiatus. Any insured losses later submitted in support of an insurer's claim for the Federal share of compensation would be reviewed for compliance with the regulations pertaining to the *pro rata* share payments.

3. Application of Pro Rata Share (§ 50.93)

Treasury is proposing that the PRLP be applied by insurers prospectively on individual insured losses that have not been settled as of the effective date of a PRLP. The intention is that the process of pro ration will not retroactively require repayment of any claims already legitimately made (or agreed to be paid) to insureds for insured losses. The impracticality of recovering payments already made is generally recognized.

From the standpoint of operational ease and in the interest of equitable treatment of all insured losses once it is expected that the cap on annual liability will be reached, Treasury sees merit in applying *pro rata* sharing of insured losses whether they are within or in excess of an individual insurer's deductible. In closely examining its authorities as stipulated in the Reauthorization Act, however, Treasury has concluded that it cannot provide for *pro rata* sharing of insured losses in such a way that an insurer's liability would be limited when it has not met its deductible. The proposed rule addresses this issue.

Proposed § 50.93 directs insurers to apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses where there is not a signed settlement as of the effective date established by Treasury for the PRLP. The same procedure applies whether this is an initial PRLP or a subsequent PRLP that is superseding the prior determination. Treasury is proposing that the *pro rata* share is determined based on the final claim settlement amount that would otherwise be paid. If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid or the amount computed by applying the PRLP to the final claim settlement amount. The proposed rule refers to ''estimated or actual'' final claim settlement amounts. This recognizes that insurers may be submitting underlying claim information in support of a claim for the Federal share of compensation after making partial payments, but prior to a final adjustment of the claim.

Some insured losses, such as those associated with workers' compensation or business interruption, may involve ongoing regular payments. In these cases, the proration is still determined based on the final claim settlement amount that would otherwise be paid. In the claims procedures regulations and in the forms for insurer submissions for the Federal share of compensation that Treasury has promulgated, workers' compensation losses are required to be substantiated at the policy level. That is to say, underlying loss information on the bordereaux and reviewed by Treasury in determining the Federal share is submitted in aggregate by policy/employer rather than individual claimant/employee. In this proposed rule, Treasury proposes to continue that scheme. The application of the PRLP to determine the *pro rata* share would be against the estimated or actual unprorated loss amounts by policy (broken down by medical only, medical portion of indemnity, and indemnity portion of indemnity), following the way loss information has been required to be reported as part of the TRIP Certifications of Loss. Despite this calculation of the *pro rata* share at the policy level for purposes of reporting to Treasury, Treasury expects that insurers would pro rate payments made to individual claimants.

If an insurer that has not yet made payments in excess of its insurer deductible estimates it will exceed its deductible making payments based on the application of the PRLP, then that insurer shall apply the PRLP as of the effective date of the PRLP. If an insurer that has not yet made payments in excess of its insurer deductible estimates it will not exceed its deductible making payments based on the application of the PRLP, then that insurer may make payments on the same basis as prior to the effective date of the PRLP. This means there is no requirement to pro-rate losses. In such circumstances, whether to pro-rate as of the effective date of the PRLP is up to the insurer. If the insurer pro rates and does not exceed its deductible, then it is liable for additional, retroactive loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible. If the insurer does not pro rate, but does exceed its deductible, then it must apply the PRLP to its remaining insured losses once it makes payments equal to its insurer deductible. Once an insurer exceeds its deductible and submits a claim for the Federal share of compensation, however, Treasury's review of eligible payments associated with the underlying losses and calculations for the Federal share would be based on the application of the PRLP as if the insurer had originally been subject to paragraph (b) of this section.

4. Data Call Authority (§ 50.94)

Treasury is proposing that it may issue a data call to insurers for the submission of insured loss information. We anticipate requesting summary level information on insured losses and insurer deductible information. Such a collection of data may be necessary not only for the purposes of the cap on annual liability, but also with regard to potential recoupment. Treasury intends, to the extent possible, to rely on existing industry statistical reporting

mechanisms in making initial estimates. However, in order to estimate whether the cap on annual liability will be reached and determine an initial or subsequent PRLP, it may be necessary to have more timely detail regarding insurer deductibles and reserves for insured losses from lines of business not normally included in existing industry reporting.

It is Treasury's intention to proceed with the development of forms for the electronic submission of insurer responses to a data call, with appropriate opportunity provided for public review and comment. It has been observed that reporting similar to that required on the current TRIP Initial Notice of Loss may be sufficient for these purposes. Treasury will review this as part of its forms development process. The circumstances of a particular Program Trigger Event will likely have a significant bearing on which insurers should receive the data call and how the data should be coordinated, perhaps with the NAIC or a particular state. Additional data call guidance will be provided as necessary based on the circumstances of the particular Program Trigger Event.

5. Final Amount (§ 50.95)

As previously discussed, Treasury intends to establish, to the extent possible, pro ration of insured losses conservatively so as to not exceed the legislative cap on annual liability. The proposed rule includes provision for Treasury to determine a final PRLP that would be used for determining the *pro rata* share to be paid on all remaining insured losses as well as for being able to provide additional payments on previously settled losses and still remain within the cap. The proposed rule also proposes that there may be a need for supplementary explanation regarding how additional payments are provided on previously settled losses that would accompany the Certifications of Loss submitted by insurers for the Federal share of compensation. The proposed rule also includes a provision, consistent with the above discussion of the treatment of *pro rata* sharing in connection with insurer deductibles, that at the time of determination of a final pro ration, an insurer may still be liable for loss payments that in the aggregate bring the insurer's total loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

IV. Procedural Requirements

Executive Order 12866, ''Regulatory Planning and Review''. This rule is a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the Act, Treasury shall not make any payment for any portion of the amount of annual aggregate insured losses that exceed $100 billion and no insurer that has met its insurer deductible is liable for the payment of any portion of the amount of annual aggregate insured losses that exceeds $100 billion. Further, the Act requires the Secretary to determine the *pro rata* share of insured losses to be paid by each insurer and to issue regulations for determining the *pro rata* share of insured losses under the Program. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. A regulatory flexibility analysis is thus not required.

Paperwork Reduction Act. The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d).

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by e-mail to *Alexander_T._Hunt@omb.eop.gov*. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by December 1, 2008.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The forms to be prescribed by Treasury for the data call pursuant to the authority in § 50.94 to collect information to ascertain the aggregate amount of insured losses will require information readily derived from existing normal industry internal and external reporting. Treasury may issue data calls to insurers to make initial estimates of aggregate losses where available industry statistical information is not specific enough, and to further refine the information needed to determine the PRLP. The number of respondents to such a data call is not expected to exceed 200 insurers. The data to be obtained in the immediate aftermath of certification of an act of terrorism would include the insurers' total expected losses and estimated insurer deductibles. Subsequent data calls to refine the information would include catastrophe code, line of business, losses paid, allocated loss adjustment expenses paid, case reserves, incurred but not reported reserves as well as the total expected loss (unprorated) and insurer deductible data. Treasury estimates that an insurer will require 5 hours, on average, to assemble data and respond to the Treasury request. The estimated total burden would therefore be 1,000 hours (200 insurers × 5 hours). At a blended, fully loaded hourly rate of $85.00, the cost would $85,000. (Note, the data call forms and submission would, as appropriate, also be utilized to obtain aggregate insured loss data needed for making recoupment determinations and notices required by the Act).

In the event of imposition of a PRLP, it will be necessary to determine insurer compliance when the Treasury is processing insurer claims for payment of the Federal share of compensation. This would be accomplished by revision to the currently approved Treasury form TRIP 02C, revised April 2006 (OMB 1505–0200, expiration December 31, 2010). This form, the ''Bordereau'' or ''Schedule C'' is submitted in support of the insurer's certification of loss (see 31 CFR 50.53) and provides detailed information about individual underlying claims. The revised form would require the addition of the settlement date of an underlying claim, the total unprorated amount of the loss, and the date of the latest payment on the claim. These are data that are normally in the insurer's own file and their reporting and recordkeeping are estimated to not represent any measurable additional reporting or recordkeeping burden.

Executive Order 13132, ''Federalism.'' The proposed rule may have federalism implications to the extent it deals with

the making of payments by insurers to their policyholders under contracts of insurance, which is ordinarily regulated under State insurance law. However, TRIA established a temporary Federal program that is national in scope and significance. Section 106 of TRIA preserves the jurisdiction or regulatory authority of State insurance commissioners or similar offices, except as specifically provided in TRIA. Section 103(e)(2) requires Treasury to issue regulations for determining the *pro rata* share of insured losses under the Program when insured losses exceed $100 billion.

Treasury consulted with the National Association of Insurance Commissioners early in the process of formulating this proposed rule. State insurance commissioners who are members of the NAIC Terrorism Insurance Working Group were given an opportunity to submit comments, and a few minor and technical comments were received and considered by Treasury. The NAIC and State insurance commissioners will have a further opportunity to comment on this proposed rule.

The provision in the proposed rule (Sec. 50.92(e)) where Treasury would call for a hiatus in payments by insurers in circumstances where the cap on annual liability may be exceeded, but an appropriate PRLP cannot yet be determined, could potentially conflict with State insurance laws prescribing fixed periods for insurers to pay claims. However, Treasury believes the impact is limited in the proposed rule because the period of the hiatus is brief (up to two weeks), and it would apply shortly after an act of terrorism occurs. Treasury has concluded that a brief hiatus is necessary to carry out the purpose of the statute to establish shares of insured losses on a *pro rata* basis by avoiding the inequity of allowing early claims to be paid in full before a PRLP can be determined.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, 31 CFR part 50 is proposed to be amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

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

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Pub. L. 109–144, 119 Stat. 2660 and Pub. L. 110–160, 121 Stat. 1839 (15 U.S.C. 6701 note).

2. Subpart J is added to read as follows:

Subpart J—Cap on Annual Liability

Sec.

50.90 Cap on annual liability.
50.91 Notice to Congress.
50.92 Determination of *pro rata* share.
50.93 Application of *pro rata* share.
50.94 Data call authority.
50.95 Final amount.

§ 50.90 Cap on annual liability.

Pursuant to Section 103 of the Act, if the aggregate insured losses exceed $100,000,000,000 during any Program Year:

(a) The Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000;

(b) No insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000; and

(c) The Secretary shall determine the *pro rata* share of insured losses to be paid by each insurer that incurs insured losses under the Program.

§ 50.91 Notice to Congress.

Pursuant to Section 103(e)(3) of the Act, the Secretary shall provide an initial notice to Congress within 15 days of the certification of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000 for the Program Year in which the event occurs. Such initial estimate shall be based on insured loss amounts as compiled by insurance industry statistical organizations and any other information the Secretary in his or her discretion considers appropriate. The Secretary shall also notify Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any Program Year.

§ 50.92 Determination of pro rata share.

(a) *Pro rata Loss Percentage (PRLP)* is the percentage determined by the Secretary to be applied by an insurer against the amount that would otherwise be paid by the insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability under Section 103(e)(2)(A) of the Act.

(b) Except as provided in paragraph (e) of this section, if Treasury estimates that aggregate insured losses may exceed the cap on annual liability for a Program Year, then Treasury will determine an initial PRLP. The PRLP applies to insured loss payments by insurers for insured losses incurred in the subject Program Year, as specified in § 50.93, from the effective date of the PRLP, as established by Treasury, until such time as Treasury provides notice that the PRLP is revised. Treasury will determine the PRLP based on the following considerations:

(1) Estimates of insured losses from insurance industry statistical organizations;

(2) Any data calls issued by Treasury (see § 50.94);

(3) Expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase;

(4) Estimates of insured losses and expenses not included in available statistical reporting;

(5) Such other factors as the Secretary considers important.

(c) Treasury shall provide notice of the determination of the PRLP through publication in the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

(d) As appropriate, Treasury will determine any revision to a PRLP based on the same considerations listed in paragraph (b) of this section, and will provide notice for its application to insured loss payments.

(e) If Treasury estimates based on an initial act of terrorism or subsequent act of terrorism within a Program Year that aggregate insured losses may exceed the cap on annual liability, but an appropriate PRLP cannot yet be determined, Treasury will provide notification advising insurers of this circumstance and calling a hiatus in insurer loss payments for insured losses of up to two weeks. In such a circumstance, Treasury will determine a PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the start of the hiatus. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the PRLP.

§ 50.93 Application of pro rata share.

An insurer shall apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses where there is not a signed settlement as of the effective date established by Treasury. Payments based on the application of the PRLP and determination of the *pro rata* share satisfy the insurer's liability for payment under the Program. Application of the PRLP and the determination of the *pro*

rata share are the exclusive means for calculating the amount of insured losses for Program purposes. The *pro rata* share is subject to the following:

(a) The *pro rata* share is determined based on the estimated or actual final claim settlement amount that would otherwise be paid. If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid or the amount computed by applying the PRLP to the estimated or actual final claim settlement amount.

(b) If an insurer that has not yet made payments in excess of its insurer deductible estimates that it will exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer shall apply the PRLP as of the effective date specified in § 50.92(b).

(c) If an insurer that has not yet made payments in excess of its insurer deductible estimates that it will not exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer may make payments on the same basis as prior to the effective date of the PRLP. If such insurer thereafter reaches its insurer deductible, then the insurer shall apply the PRLP to its remaining insured losses. When such an insurer submits a claim for the Federal share of compensation, the amount of the insurer's losses will be deemed to be the amount it would have paid if it had applied the PRLP as of the effective date, and the Federal share of compensation will be calculated on that amount. However, an insurer may request an exception if it can demonstrate that its estimate was invalidated as a result of insured losses from a subsequent act of terrorism.

§ 50.94 Data call authority.

For the purpose of determining initial or recalculated PRLPs Treasury may issue a data call to insurers for insured loss information. Submission of data in response to a data call shall be on a form promulgated by Treasury.

§ 50.95 Final amount.

(a) Treasury shall determine if, as a final pro ration, remaining insured loss payments, as well as adjustments to previous insured loss payments, can be made by insurers based on an adjusted PRLP, and aggregate insured losses still remain within the cap on annual liability. In such a circumstance, Treasury will notify insurers as to the final PRLP and its application to insured losses.

(b) If paragraph (a) of this section applies, Treasury may require, as part of the insurer submission for the Federal share of compensation for insured losses, supplementary explanation regarding how additional payments will be provided on previously settled insured losses.

(c) An insurer that has pro rated its insured losses, but that has not met its insurer deductible, remains liable for loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

§ 50.53 [Amended]

3. Section 50.53 is amended by adding paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) A certification that if Treasury has determined a *Pro rata* Loss Percentage (PRLP) (see § 50.92), the insurer has complied with applying the PRLP to insured loss payments, where required.

* * * * *

David G. Nason,

Assistant Secretary (Financial Institutions).

[FR Doc. E8–22940 Filed 9–29–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0440]

RIN 1625–AA87

Security Zone; Coast Guard Base San Juan, San Juan Harbor, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone in the vicinity of the Coast Guard Base in San Juan, Puerto Rico. The security zone is needed for national security reasons to protect the public and the Coast Guard base from potential subversive acts. The proposed rule would exclude entry into the security zone by all vessels and personnel without permission of the U.S. Coast Guard Captain of the Port San Juan.

DATES: Comments and related material must reach the Coast Guard on or before December 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0440 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

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

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

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Ensign Rachael Love of Sector San Juan, Prevention Operations Department at (787) 289–2071. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0440), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger

than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0440) in the Search box, and click ''Go>>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Juan, 5 Calle La Puntilla, San Juan, Puerto Rico, 00901 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

The Coast Guard docking facilities at La Puntilla in Old San Juan are home to six Coast Guard cutters and six Coast Guard small boats. Incidents of unknown vessels mooring up to the Coast Guard piers has occurred twice in the past year. In addition, suspected surveillance in the form of photography has been performed by unknown individuals located in close proximity to the Coast Guard base on more than one occasion. These incidents pose a potential threat to national security and may lead to subversive acts against the personnel or equipment located at the Coast Guard base.

This rulemaking attempts to solve the problem by prohibiting all persons and vessels from entering in, transiting through or remaining in a security zone extending 100 yards seaward from the water's edge of the Coast Guard La Puntilla facility.

Discussion of Proposed Rule

This proposed rule would require all people and vessels to remain at least 100 yards from the water's edge of the Coast Guard facility, starting at the north end of the Coast Guard base Pier ALFA, continuing south around the base ending at the northwestern side of La Puntilla. This would prevent vessels from mooring on the Coast Guard piers and unauthorized individuals from being within close proximity to the Coast Guard base.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

This proposed rule is not a significant regulatory action because the security zone only extends 100 yards from Base San Juan and does not impede any regular vessel traffic (i.e., cruise ships, ferries, small passenger vessels, etc.). Vessels will be able to transit safely around the zone. In the event that a vessel or person feels the need to temporarily transit through the proposed security zone, the COTP will handle the requests on a case-by-case basis.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the proposed zone. The impact would not be economically significant because vessels would be able to transit around the zone. The proposed area does not encompass any portions of any shipping channels and would only affect those vessels transiting the area adjacent to the Coast Guard facility.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Rachael Love of Sector San Juan, Prevention Operations Department at (787) 289–2071. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. A preliminary environmental analysis check list supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.776 to read as follows:

§ 165.776 Security Zone; Coast Guard Base San Juan, San Juan Harbor, Puerto Rico.

(a) *Location.* The following area is a security zone: All waters from surface to bottom, encompassed by an imaginary line connecting the following points, beginning at 18°27′39″ N, 066°06′56″ W; then east to Point 2 at 18°27′39″ N, 066°06′52″ W; then South to Point 3 at 18°27′35″ N, 066°06′52″ W; then Southwest to Point 4 at 18°27′30″ N, 066°06′59″ W; then northeast to Point 5 at 18°27′35″ N, 066°07′07″ W; then north to Point 6 at 18°27′46″ N, 066°07′10″ W; then back to shore at the northwest end of the CG facility at Point 7 at 18°27′46″ N, 066°07′07″ W. These coordinates are based upon North American Datum 1983.

(b) *Definitions.* As used in this section—

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

(c) *Regulations.* (1) No person or vessel may enter into the security zone described in paragraph (a) of this section unless authorized by the Captain of the Port San Juan.

(2) Vessels seeking to enter the security zone established in this section may contact the COTP on VHF channel 16 or by telephone at (787) 289–2041 to request permission.

Dated: September 9, 2008.

E. Pino,

Captain, U.S. Coast Guard, Acting Captain of the Port San Juan.

[FR Doc. E8–22890 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2008–0588; FRL–8722–5]

Idaho: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Idaho has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery

Act, as amended (RCRA). EPA has reviewed Idaho's application, has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: Comments on this proposed rule must be received by October 30, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2008–0588, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Kocourek.Nina@epa.gov.*
- *Mail:* Nina Kocourek, U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Instructions: Direct your comments to Docket ID No. EPA–R10–RCRA–2008–0588. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or 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 during normal business hours at the U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics, Mailstop AWT–122, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, contact: Nina Kocourek, phone number: (206) 553–6502; or the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho, contact: John Brueck, phone number: (208) 373–0458.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–6502, e-mail: *kocourek.nina@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 268, 270, 273, and 279.

B. What Decisions Have We Made in This Proposed Rule?

EPA has preliminarily determined that Idaho's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Idaho final authorization to operate its hazardous waste program with the changes described in the authorization application. Idaho will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Idaho Is Authorized for These Changes?

If Idaho is authorized for these changes, a facility in Idaho subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions would not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

D. What Happens If EPA Receives Comments on This Action?

If EPA receives comments on this action, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Idaho Previously Been Authorized For?

Idaho initially received final authorization on March 26, 1990, effective April 9, 1990 (55 FR 11015) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Idaho's authorized program on April 6, 1992, effective June 5, 1992 (57 FR 11580); June 11, 1992, effective August 10, 1992 (57 FR 24757); April 12, 1995, effective June 11, 1995 (60 FR 18549); October 21, 1998, effective January 19, 1999 (63 FR 56086); July 1, 2001, effective July 1, 2001 (67 FR 44069); March 10, 2004, effective March 10, 2004 (69 FR 11322); July 22, 2005, effective July 22, 2005 (70 FR 42273); and February 26, 2007, effective February 26, 2007 (72 FR 8283).

F. What Changes Are We Proposing?

On June 24, 2008, Idaho submitted a program revision application seeking authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2007, incorporated by reference in IDAPA 58.01.05.(002)–(016) and (018).

G. Who Handles Permits After the Authorization Takes Effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

H. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Proposed Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. This is done by referencing the authorized State rules in 40 CFR Part 272. Through codification actions dated December 6, 1990 (55 FR 50327); June 11, 1992 (57 FR 24757); June 25, 1999 (64 FR 34180); March 8, 2005 (70 FR 11132); and April 20, 2006 (71 FR 20341), EPA codified at 40 CFR Part 272, Subpart N previous authorization actions for the State of Idaho program. EPA is reserving the amendment of 40 CFR Part 272, Subpart N for codification to a later date.

I. How Would Authorizing Idaho for These Revisions Affect Indian Country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program on these lands.

J. Statutory and Executive Order Reviews

This proposed rule seeks to revise the State of Idaho's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This proposed rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR Part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town,

school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of today's proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Similarly, EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, today's proposed rule is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.'' This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule proposes to authorize pre-existing State rules. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a state program.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This proposed rule does not affect the level of protection provided to human health or the environment because this rule proposes to authorize pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 18, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

[FR Doc. E8–22800 Filed 9–29–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1009]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before December 29, 2008.

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

You may submit comments, identified by Docket No. FEMA–B–1009, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
Unincorporated Areas of Lauderdale County, Alabama					
Alabama	Unincorporated Areas of Lauderdale County.	Shoal Creek	BFE 520 is at a point of 1,435 feet upstream of the confluence of Shoal Creek and Indiancamp Creek.	None	+520
			BFE 558 is at a point of 27,805 feet upstream of the confluence of Shoal Creek and Butler Creek.	None	+558
Alabama	Unincorporated Areas of Lauderdale County.	Tennessee River (Navigation Channel).	BFE 432 is at a point of 5,270 feet upstream of the intersection of the Tennessee River and O'Neal Bridge.	+431	+432
			BFE 435 is at a point of 263 feet downstream of Wilson Dam.	+431	+435

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

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

ADDRESSES

Unincorporated Areas of Lauderdale County

Maps are available for inspection at 5100 Hwy 157 N, Florence, AL 35633.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Ben Hill County, Georgia, and Incorporated Areas				
Turkey Creek	Just upstream of Industrial Drive	None	+315	Unincorporated Areas of Ben Hill County.
	Approximately 270 feet downstream of Cemetery Road.	None	+319	
	At Cemetery Road	None	+319	
	Approximately 1,520 feet downstream of Monitor Drive.	None	+327	
	Approximately 760 feet upstream of Sultana Drive	None	+341	
	Approximately 1,150 feet upstream of Rochelle Road	None	+344	
Turkey Creek Tributary No. 1	Approximately 950 feet downstream of W. Roanoke Drive.	None	+328	Unincorporated Areas of Ben Hill County.
	Approximately 480 feet downstream of W. Roanoke Drive.	None	+329	
Willacoochee River	Approximately 1,880 feet downstream of Irwinville Highway.	None	+324	Unincorporated Areas of Ben Hill County.
	Approximately 1,780 feet downstream of Irwinville Highway.	None	+324	
	Approximately 1,280 feet downstream of Irwinville Highway.	None	+325	
	Approximately 480 feet downstream of Irwinville Highway.	None	+326	

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

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

ADDRESSES

Unincorporated Areas of Ben Hill County

Maps are available for inspection at County Commissioners Office, 402–A East Pine Street, Fitzgerald, GA 31750.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Halifax County, Virginia, and Incorporated Areas				
Reedy Creek	Approximately 1,400 feet downstream of Ash Avenue	None	+331	Unincorporated Areas of Halifax County.
	At confluence with Dan River	None	+331	
Rocky Branch	At confluence with Reedy Creek	None	+331	Unincorporated Areas of Halifax County.
	Approximately 0.4 mile upstream of Eastover Road	None	+346	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Halifax County

Maps are available for inspection at Halifax County GIS Department, 134 South Main, Halifax, VA 24558.

Spokane County, Washington, and Incorporated Areas				
Argonne Creek	Approximately 1,300 feet downstream of N Maringo Drive.	None	+1922	Unincorporated Areas of Spokane County.
	Approximately 600 feet upstream of N Boeing Road	None	+1987	
Forker Draw	Approximately at N Progress Road	None	+2065	Unincorporated Areas of Spokane County, City of Spokane Valley.
	Approximately 70 feet downstream of E Bigelow Gulch Road.	None	+2336	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
#Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Spokane Valley

Maps are available for inspection at 11707 E. Sprague Ave., Suite 106, Spokane Valley, WA 99206.

Unincorporated Areas of Spokane County

Maps are available for inspection at 808 W. Spokane Falls Blvd., Spokane, WA 99201.

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

Dated: September 19, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–22981 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. FTA–2007–0011]

RIN 2132–AA95

Bus Testing; Phase-In of Brake Performance and Emissions Testing, and Program Updates

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking (NPRM) provides interested parties with the opportunity to comment on the Federal Transit Administration's (FTA's) proposed changes to its Bus Testing Regulation. The NPRM incorporates tests for brake performance and emissions into FTA's Bus Testing Program to comply with the Safe, Accountable, Flexible, Equitable Transportation Efficiency Act: a Legacy for Users (SAFETEA–LU). To improve the FTA Bus Testing Program, FTA is also proposing several updates that will enhance the Program's value and respond to changes in the transit bus industry. FTA seeks comments on the proposals in this notice.

DATES: Comments on this proposed rule must be received on or before December 1, 2008.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number FTA–2007–0011) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

See **SUPPLEMENTARY INFORMATION** section for more information on submitting comments.

FOR FURTHER INFORMATION CONTACT: For technical information, Marcel Belanger, Bus Testing Program Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366–0725, *marcel.belanger@dot.gov.* For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366–0675, *richard.wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

Instructions for submitting comments: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2007–0011) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For internet access to the docket to read background documents and comments received, go to *www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

Section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) provided that no funds appropriated or made available under the Urban Mass Transportation Act of 1964, as amended, were to be obligated or expended for the acquisition of a new model bus after September 30, 1989, unless a bus of such model had been tested at a facility to be established in Altoona, Pennsylvania. The intent of the testing was to provide reliable performance information to transit authorities that could be used in their purchase or lease decisions. Section 6021 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended section 317 of STURAA to add tests for brake performance and emissions. Section 3020 of SAFETEA–LU did not change these requirements, incorporating them at 49 U.S.C. 5318. SAFETEA–LU also amended subsection 5318(a) to state, ''The Secretary of Transportation shall maintain one facility for testing a new bus model...'' when this section had previously read ''establish one facility.''

The Bus Testing Center is operated by the Pennsylvania Transportation Institute (PTI) of The Pennsylvania State University. The Bus Testing Center currently performs seven categories of tests that were required by STURAA and are based in part on tests described in the UMTA (Urban Mass Transportation Administration—FTA's predecessor) report, ''First Article Transit Bus Test Plan,'' which is mentioned in the legislative history of Section 317. These tests, when appropriate, leverage Society of Automotive Engineers (SAE) test procedures and other procedures accepted by the transit industry. The seven current test categories are Maintainability, Reliability, Safety, Performance, Structural Integrity, Fuel Economy, and Noise.

The primary purpose of this NPRM is to seek comments on FTA's proposal to incorporate brake performance and emissions tests into FTA's Bus Testing Regulation. FTA is also using this opportunity to seek comments on ways to update the regulation to improve the functioning of the program, enhance its value, and clarify any ambiguities in the existing regulation.

Statutory Changes

FTA seeks comments on the proposed testing procedures, estimated testing fees, and estimated test durations for brake performance and emissions testing, which can be reviewed in the docket (see **ADDRESSES**). The test procedures, costs, and durations will be reviewed after the Bus Testing Center has gained experience in conducting these tests, and the procedures and the time and fee schedule may be revised in the future if necessary. It is possible that different cost tiers might be established if the need becomes apparent as a result of these reviews. For example, battery-dominant (i.e., ''plug-in'') hybrid-electric buses may need to perform additional runs of the Emissions test in order to assess the varying effects on emissions of full and depleted battery states of charge.

Brake Performance Test Procedure

The full proposed draft Brake Testing Procedure is available for review in the docket (*see* **ADDRESSES**). In summary, the operator of the Bus Testing Center will install equipment both on the test bus and at the facilities to support the brake performance test. Prior to the start of a brake performance test, the brake system's functionality will be evaluated. The evaluation will ensure that the brakes are properly adjusted, burnished, and the anti-lock brake system is functioning properly. The proposed test procedure specifies that the test bus will be subjected to a series of brake stops from 20, 30, 40, and 45 mph on a high-friction surface; from 20 mph on a low-friction surface; and up to 45 mph on a split-coefficient surface. The parking brake will be evaluated facing uphill and downhill on a ramp with a 20 percent grade. FTA also seeks comments on whether, and, if so, how, the Maintainability and Noise tests should be modified to capture useful data related to the brake system and whether any such changes should be done within the regulation itself or in non-regulatory policies and procedures. Although it could logically be included under the Safety test category, FTA proposes to incorporate the brake performance test within the existing Performance test category, as specified by SAFETEA–LU. The proposed test procedure specifies that all brake performance tests will be performed with the bus loaded to gross vehicle weight.

Emissions Test Procedure

The proposed draft Emissions Testing Procedure is available for review in the docket (see **ADDRESSES**). The detailed emissions testing procedure has not been finalized, pending setup of the laboratory facility. However, the proposed draft Emissions Testing Procedure is based on 40 CFR Part 86—''Emissions Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines;

Gaseous and Particulate Exhaust Test Procedures'' and 40 CFR Part 1065—''Engine Testing Procedures,'' as well as the Society of Automotive Engineers (SAE) Recommended Practice SAE J2711. The Emissions test will be conducted at the Bus Testing Facility using an emissions testing laboratory equipped with a chassis dynamometer capable of both absorbing and applying power. The emissions of those exhaust constituents regulated by the United States Environmental Protection Agency (EPA) for transit buses, plus carbon dioxide (CO_2) and methane (CH_4), will be measured as the bus is operated over industry-standard driving cycles specified in the test procedure. FTA proposes that mileage accumulated by a bus while operating on the dynamometer during emissions testing will be counted toward the ''other'' miles that must be accumulated during durability testing. Under the proposed test procedure, the dynamometer would be set to simulate curb weight plus one-half of the full seated load for the particular bus under test, in order to be consistent with the above-cited industry standard emissions measurement protocols and to facilitate direct comparisons with emissions measurements collected outside the Bus Testing Program. FTA also seeks comments on the merits of performing the emissions tests with the chassis dynamometer set to simulate gross vehicle weight, which would generally be expected to represent the ''worst case'' for emissions, seated load weight, which may result in emissions measurements closer to a typical case (and which would be consistent with the Performance and Fuel Economy tests, which are currently performed at seated load weight), or a different weight. FTA also seeks comments on whether, and if so, how, the Maintainability test should be modified to capture useful data related to the emissions control system and whether any such changes should be made within the regulation itself or in non-regulatory policies and procedures. FTA proposes to add the Emissions test as a separate, eighth, test category.

Applicability and Phase-In

FTA proposes that the date on which a bus' testing contract was signed will determine the applicability of the brake performance and Emissions tests. Models whose testing contracts were signed before the effective date of this regulation and that continue to be produced without major changes in any structure or systems will not be required to return to the Bus Testing Center to undergo brake performance and emissions testing. Bus Testing contracts signed before the effective date of the rule will not need to include brake performance or emissions testing.

Buses whose full or partial testing contracts are signed on or after the effective date of this regulation will be subject to brake performance and emissions testing (in addition to the other testing requirements). That is, full testing will include the brake performance and Emissions tests. Partial tests triggered by major changes in any part of the bus will include one or both of these tests if FTA would reasonably expect to obtain significantly different test data. In cases where brake performance or emissions data have never been obtained at the Bus Testing Center (initially, in all cases), a change in data is clearly expected and these tests will be required for buses undergoing partial testing, even if major changes have not been made to the brake or emissions control systems. In addition, upon the effective date of the regulation, major changes made to the braking system or to the engine, fuel, or emissions control systems of a previously tested bus model will also trigger partial testing. Partial testing triggered by major changes to the brake or emissions control systems could also include other tests if FTA would reasonably expect to obtain significantly different data from including them.

FTA also seeks comments on whether the Emissions test should apply to all vehicles subject to FTA's Bus Testing Regulation or whether any classes of buses should be exempted. FTA also seeks comments on whether its emissions testing program should begin on the effective date of this rule for all bus types subject to testing or whether the Emissions test requirement should be gradually phased in for various classes of bus (e.g., small or large buses), similar to the phase-in process used in the initial start-up of FTA's Bus Testing Program.

Partial Testing

Partial testing provisions will continue to serve as a means to reduce the cost and time required for testing bus models that have previously completed full testing at the Bus Testing facility but that are subsequently produced with major changes in configuration or components. Consistent with current policy, partial testing determinations will be made on a case-by-case basis. Partial testing may be required when changes made to a bus are expected to produce significantly different data from that previously obtained at the Bus Testing facility.

With regard to the brake performance test, FTA seeks comments on the following proposed list of examples of ''major changes'' that would require previously-tested buses to undergo the brake performance test:

Examples of a major change in the brake system may include, but are not limited to:

1. Change in service brake technology, e.g., changing from drum brakes to disc brakes, or from friction brakes to electromagnetic brakes;
2. Change in brake control technology, e.g., changing the primary control circuit from pneumatic control to electronic or hydraulic control;
3. Changes to the shoe lining, brake pad, drum, and/or rotor material(s) that impact the stopping performance of the bus;
4. Changes to the brake air line plumbing that impact application timing;
5. The addition or major modification of advanced control algorithms that utilize the service brakes, e.g., rollover and yaw stability programs, collision warning systems, or advanced cruise control systems; and/or
6. Adding, deleting, or making major changes to a regenerative braking system.

With regard to the Emissions test, FTA seeks comments on the following proposed list of examples of ''major changes'' that would require previously-tested buses to undergo the Emissions test:

Examples of a major change in the engine, fuel system, or emissions control system may include, but are not limited to:

1. A change to a different engine model;
2. A major change in calibration of the engine, transmission, or hybrid system;
3. A change to a different type of fuel; and/or
4. A major change in the engine-out emissions or emissions control system, such as addition, deletion, or substantial modification of in-cylinder combustion control, exhaust gas recirculation, or aftertreatment devices.

Reporting Procedures

Data from the brake performance test will be reported in the Performance section of the Bus Testing Report (full or partial, as appropriate) for a bus model. Data from the Emissions test will be reported in a new Emissions section of the Bus Testing Report (full or partial, as appropriate) for a bus model. Data from these tests will also be available on the interactive Bus Testing Database accessible at *http://www.altoonabustest.com.*

FTA also seeks comments on how to present data collected from the brake performance and Emissions tests better in the Bus Testing Reports as well as in the Bus Testing Database. FTA also welcomes comments on how to present the data from any of the eight test categories more effectively.

Other Proposed Changes

FTA seeks comments on the following changes that are not specified by statute but which may improve the functioning of the program, enhance its value, or clarify existing provisions.

Service Life Category

Section 665.11(e) of FTA's Bus Testing Regulation gives general guidance on the types of buses that fall into each service life category. However, Section 665.11(f) states, ''Tests performed in a higher service life category (i.e., longer service life) need not be repeated when the same bus model is used in lesser service life applications.'' Consequently, over the past several years FTA has noticed a trend of manufacturers sometimes testing buses in a higher service life category than FTA had originally contemplated for buses of similar construction.

FTA had hoped that this regulatory flexibility would ease burdens on both transit manufacturers and customers and, combined with market forces, would over time encourage improved durability and useful life of buses. Grantees have reported a downside as they find that some of these ''uprated'' buses cannot functionally meet their advertised useful service life.

FTA seeks comments on whether it should maintain its current policy of allowing manufacturers to determine the useful life category in which their buses will be tested and expecting grantees to evaluate the bus testing reports carefully to assess whether the bus will in fact adequately meet their service life requirements. FTA also seeks comments on alternative policies for determining the service life category in which a particular bus model will be tested, such as (1) redefining the characteristics of buses in each service life category, and if that approach is taken, what those characteristics should be; (2) requiring manufacturers to request an official determination from FTA of a vehicle's service life category; or (3) providing guidance on the standard useful life based on type of construction but allowing manufacturers to test and sell in higher service life categories if they post a ''durability assurance'' bond or similar instrument.

Buses That Exceed Weight Limits When Fully Loaded

FTA notes that a number of buses tested at the Bus Testing Center could not be operated in their fully loaded mode (i.e., with all seats and standee positions occupied), since doing so would have caused their actual weight to exceed either their gross vehicle weight ratings (GVWR) or a front or rear gross axle weight rating (GAWR). In these cases, testing ballast was removed from these buses until their actual measured gross and axle weights did not exceed their specified GVWR or GAWRs. This is necessary because State law prevents the Bus Testing Operator from operating buses on public roadways when loaded in excess of their maximum legal weight ratings. However, FTA notes that the test data may not then reflect the performance of these buses in actual service, where operators commonly disregard the legal weight limits to avoid leaving passengers behind at a stop. FTA seeks comments on the following three approaches for addressing these situations:

1. Perform any tests that are specified in the test procedures to be performed at GVW on the test track (which is not a public roadway) with all seats and standee positions ballasted, and perform any tests that are specified in the test procedures to be performed at seated load weight (SLW) on the test track with all seats ballasted. Although the bus would be overloaded, the test data may be more representative of the conditions the bus will face in actual service. This approach would help to ''flag'' buses that are not adequately able to withstand the rigors of transit service. The Bus Testing Report would prominently state that certain (specified) portions of the test were performed in excess of the (specified) gross and/or axle weight rating(s). In addition, any time the bus had to be operated on public roadways, the manufacturer would need to pay the facility operator for the cost of unloading ballast to comply with the legal weight ratings, as well as the cost of restoring the ballast when the bus returned to the test track (the operator could make operational adjustments to limit, but probably not eliminate, the number of times this unloading/reloading cycle occurs). FTA also seek comments on whether manufacturers of such buses should pay the entire cost of this unloading/reloading activity, or whether this should be included in the overall testing charges for which manufacturers pay only 20 percent of the total. If such a policy is adopted, FTA also seek comments on whether it should apply to all transit vehicles, and if not, then how it should be applied. For example, dedicated paratransit vehicles may require a large open floor area to allow wheelchair maneuvering, and would not normally be operated with a full load of standee passengers. Alternatively, FTA seeks comments on whether the definition for ''gross weight'' could be revised to address such situations, and what the ramifications of such a change in definition might be.

2. Continue the operator's current practice of deleting ballast until the bus is within legal weight limits, but place a more prominent notice in the Bus Testing Report stating that the bus will exceed its maximum GVWR and/or GAWR with all passenger positions occupied, and alerting readers that the testing data may not be representative of the bus' actual in-service durability.

3. Decline to test a bus that exceeds its GAWR or GVWR when loaded to full capacity according to the test procedure.

Family of Vehicles

FTA seeks comments on whether it is appropriate to expand its existing ''Family of Vehicles'' policy to the 7-year (or higher) service life categories. The existing Family of Vehicles policy is limited to buses in the 4-year and 5-year service life categories only, and allows manufacturers that have tested a complete bus built on one third-party chassis to offer variants of that bus body on a different (but similar) mass-produced chassis that has been tested at the Bus Testing Center on any bus by any other bus manufacturer. FTA seeks comments on the desirability and ramifications of extending the family of vehicles policy to all buses built on third party chassis.

Separate Reporting of Third-Party Chassis Test Results

While the law authorizing the Bus Testing Program (49 U.S.C. 5318) treats buses as integrated systems, FTA's Family of Vehicles policy described in the previous paragraph would be easier to implement and understand if the Bus Testing Center were to produce separate testing reports for third-party chassis. These reports could be prepared by identifying, separating out, and summarizing only the chassis-related data during tests of buses built on third-party chassis. However, the Bus Testing Center operator has expressed concern that in past experience, a significant number of buses are tested on modified third-party chassis, and these modifications, even if performed in strict compliance with the

manufacturer's guidelines, would frustrate comparisons of data on third-party chassis. FTA seeks comments on the desirability of preparing separate test reports for third-party chassis that are tested in the course of testing complete buses built on those chassis. FTA also seeks comments on any practical considerations that may need to be addressed or difficulties that may be presented, as well as the best ways to separate and report data on third-party chassis. Finally, FTA seeks comments on how the costs of this additional reporting should be borne.

FTA Evaluation/Recommendation of Bus Models

A number of FTA grantees have asked for issuance of a ''pass/fail'' determination for buses in the Bus Testing Reports. Experience has shown that the level of bus performance required varies among operators, and durability that is adequate for one transit operator may be inadequate for another. Therefore, it would be difficult to establish pass/fail thresholds in an optimal manner for all bus purchasers. Instead, Bus Testing Reports present data so that grantees can make informed decisions about the suitability of a particular bus model. FTA grantees have noted that state or local procurement provisions requiring selection of the low bidder sometimes result in the acquisition of less suitable buses, and that a Bus Testing Report ''pass/fail'' system might provide a basis to remove an inadequate bus model from consideration. FTA seeks comments on whether the Bus Testing Reports should include a ''pass/fail'' criterion or a ''recommended/not-recommended'' determination, and if so, how thresholds for such determinations should be established. Alternatively, FTA seeks comments on improved ways to enhance the presentation of data in the reports (e.g., by presenting data graphically) so that information for decision-making is more readily apparent and better informs local decisions.

Section by Section Analysis

Section 665.1 Purpose

The long-past phase-in date has been removed.

Section 665.3 Scope

The references have been updated, and a list of long-past phase-in dates has been removed.

Section 665.5 Definitions

FTA proposes to add new definitions for the terms *automotive, [full] bus testing report, curb weight, emissions, emissions control system, engine-out emissions, final acceptance, gross weight, hybrid, parking brake, partial testing report, regenerative braking system, retarder, seated load weight, service brake(s), and tailpipe emissions.* FTA uses these terms in its test procedures, and frequently uses these terms in its determinations of testing requirements for new and modified bus models; however, the regulation previously did not define the terms. FTA also proposes to replace the existing term *mass-produced chassis* with the term *third-party chassis,* defined as a commercially available chassis whose design, manufacturing, and quality control are performed by an entity independent of the final stage bus manufacturer. FTA feels that this definition more accurately captures the characteristics of these chassis. Several other definitions are consequently modified to substitute the term *third-party chassis* for the term *mass-produced chassis,* and the definition for *non-mass-produced chassis or van* is deleted. FTA notes that when the existing Bus Testing Regulation was written, the term *mass-produced chassis,* defined as production in excess of 20,000 units annually, applied to only two brands of chassis that were appropriate for and typically only used in the 4-year (i.e., light) and 5-year (i.e., medium-light) service life categories. This was a means of giving relief to small bus manufacturers that used these high-volume commercial chassis. However, in the 18 years since the regulation was written, the industry has evolved, and now there are several manufacturers of buses using commercial chassis in the medium-light through medium-heavy-duty bus categories. These chassis are produced in significant numbers, and although some may not reach the threshold of 20,000 units annually, most if not all are produced using mass-production techniques.

FTA seeks comment on whether its definitions of *original equipment manufacturer (OEM)* and *modified third-party chassis or van* are still current with regard to vehicles used in transit service. FTA is aware that many third parties who modify OEM vehicles are themselves considered manufacturers for purposes of National Highway Traffic Safety Administration (NHTSA) regulations, depending upon the scope of the modifications and whether or not they were undertaken prior to first retail sale. Although most of NHTSA's regulations refer generally to ''manufacturers,'' NHTSA distinguishes between incomplete vehicle manufacturers, intermediate manufacturers, final stage manufacturers, and alterers (see 49 CFR Part 567 for definitions). Depending on the roles each of these entities plays with regard to a vehicle, they may all be considered manufacturers and, accordingly, have some responsibilities with regard to certification of compliance and any necessary safety recalls under the laws NHTSA administers. These distinctions are relevant only with regard to vehicles with which more than one manufacturer is involved prior to the first retail sale. ''OEM'' is not actually defined in NHTSA's rules, but NHTSA sometimes uses the term to refer to major vehicle manufacturers (some rules use the term to refer to manufacturers of motor vehicle equipment that is used in new vehicles). FTA seeks comment on whether it would be appropriate to continue to regard such a vehicle as ''modified'' by a third party if the third party is regarded as an OEM in its own right and the modified vehicle is regarded as separate and distinct from the vehicle upon which it is based.

FTA proposes to modify the definition for *unmodified third-party* (formerly mass-produced) *chassis* by deleting the statement, ''A bus chassis modified by the addition of a tandem or tag axle is not considered an unmodified third-party chassis,'' because this procedure will either be prohibited (most likely), or permitted within strict limits, by the OEM's modification guidelines.

References to the term *mass transportation* have been changed to *public transportation* in conformance with SAFETEA–LU, the obsolete definition for *FT Act* has been deleted, and several other minor edits are proposed to improve clarity. FTA seeks comments on these proposed new or revised definitions of terms in Part 665.

Section 665.7 Grantee certification of compliance

FTA is not proposing any changes in policy or procedure, however, the text of this section has been revised to clear up ambiguity and remove the long-past phase-in date. While the proposed regulation still permits grantees to receive the Test Report just prior to final acceptance, FTA continues to recommend strongly that grantees carefully review and assess the applicable Bus Testing Report(s) before committing to purchasing a particular bus model.

Section 665.11 Testing requirements

The list of full tests in Section 665.11(b) is expanded by including

braking performance and Emissions tests. FTA proposes to delete the second sentence in Section 665.11(f), which stated, ''However, the use of a bus model in a service life application higher than it has been tested for may make the bus subject to the bus testing requirements.'' FTA policy has consistently been that a bus may not be offered in a higher service life category than it has been tested in (but a bus manufacturer may re-test a bus model in a higher service life category if the manufacturer believes it is appropriate to do so). Additional minor edits are proposed for the sake of consistency and clarity. FTA seeks comments on these changes, and also seeks comments on whether the guidance on certain characteristics of buses typical of each service life category should be retained or modified.

Section 665.13 Test report and manufacturer certification

FTA proposes several minor edits in this section for clarity, and to acknowledge that many buses are acquired through a dealer rather than directly from the manufacturer. FTA also proposes to change the reference to the ''owner of the test report'' in section 665.13(d) to read ''bus manufacturer.'' While the manufacturer can control whether the report is released to the public (e.g., the manufacturer decides that the bus model will not compete for FTA-funded procurements), the reports are owned by the U.S. Government on behalf of the public.

Section 665.21 Scheduling

This section is revised to remove the regulatory specification of a name, address, and phone number of the Bus Testing Program Operator, and replace it with a link to a website with contact information and scheduling procedures.

Section 665.23 Fees

FTA is not proposing any changes to the text of the regulation itself, although the operator's fee schedule referenced in the regulation will be amended to include the new fees proposed for the brake performance and emissions tests. FTA supports continuation of the operator's policy that in cases of pro-rating the test fee due to early withdrawal of a bus under test, the manufacturer's 20% share of the test fee is applied toward testing costs before the 80% FTA share is applied. The operator's unchanged schedule of fees for the existing tests and its proposed schedule of fees for the additional brake performance and emissions tests are available for review in the docket (*see* **ADDRESSES**).

Section 665.25 Transportation of vehicle

FTA is not proposing any changes.

Section 665.27 Procedures during testing

FTA is proposing to remove the current paragraphs (a) and (b) which are already addressed elsewhere in the regulation. The procedures for determining which tests shall be performed are addressed in section 665.21(b)(3), and the apportionment of the testing fee due to the manufacturer's withdrawal of a bus from the bus testing program is currently addressed in section 665.23(b).

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

The paragraph describing the Performance test is modified to add a description of the proposed braking performance test. A new paragraph describing the proposed Emissions test has been added. The introductory paragraph has been edited accordingly. Where applicable, the descriptions have been edited to conform to the actual test procedures currently in use, speculative comments in the original 19-year-old text have been deleted, the descriptions have been changed from the future to the present tense, and unnecessary details (e.g., weights or speeds, which are described in the actual test procedures) have been removed.

Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

Executive Order 12866 and DOT Regulatory Policies and Procedures. This NPRM is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is also nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, Feb. 26, 1979). This NPRM imposes minor compliance costs on the regulated industry. FTA, however, will pay 80% of any incremental testing costs.

B. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. Although this NPRM imposes new costs, those costs are not significant and are 80 percent paid for by FTA. Therefore, FTA believes that this proposal does not require further analysis under the Regulatory Flexibility Act. FTA requests public comment on whether the proposals contained in this NPRM will have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This NPRM does not propose unfunded mandates under the Unfunded Mandates Reform Act of 1995. If the proposals are adopted into a NPRM, it will not result in costs of $100 million or more (adjusted annually for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

This NPRM proposes no new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this NPRM.

I. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *www.regulations.gov.*

List of Subjects

Buses, Grant programs—transportation, Public transportation, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Transit Administration proposes to amend 49 CFR Part 665 as set forth below:

Title 49—Transportation

PART 665—BUS TESTING

1. The authority citation for Part 665 is revised to read as follows:

Authority: 49 U.S.C. 5318 and 49 CFR 1.51.

2. Revise Part 665 to read as follows:

PART 665—BUS TESTING

Subpart A—General

Sec.
665.1 Purpose.
665.3 Scope.
665.5 Definitions.
665.7 Grantee certification of compliance.

Subpart B—Bus Testing Procedures

665.11 Testing requirements.
665.13 Test report and manufacturer certification.

Subpart C—Operations

665.21 Scheduling.
665.23 Fees.
665.25 Transportation of vehicle.
665.27 Procedures during testing.

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

Subpart A—General

§ 665.1 Purpose.

An applicant for Federal financial assistance under the Federal Transit Act for the purchase or lease of buses with funds obligated by the FTA shall certify to the FTA that any new bus model acquired with such assistance has been tested in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

§ 665.3 Scope.

This part shall apply to an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, 5310, or 5311.

§ 665.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Automotive means that the bus is not continuously dependent on external power or guidance for normal operation. Intermittent use of external power or guidance shall not automatically relieve a bus of its automotive character or requirement for Bus Testing.

Bus means a rubber-tired automotive vehicle used for the provision of public transportation service by or for a recipient.

Bus model means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

Bus testing facility means a testing facility established by renovation of a facility constructed with Federal assistance at Altoona, Pennsylvania, under section 317(b)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and includes test track facilities operated in connection with the facility.

Bus testing report, also *full bus testing report,* means a complete test report for a bus model, documenting the results of performing the complete set of bus tests on a bus model.

Curb weight means the weight of the empty, ready-to-operate bus plus driver and fuel.

Emissions means the components of the engine tailpipe exhaust that are regulated by the United States Environmental Protection Agency (EPA), plus carbon dioxide (CO_2) and methane (CH_4).

Emissions control system means the components on a bus whose primary purpose is to minimize regulated emissions before they reach the tailpipe exit. This definition does not include components that contribute to low emissions as a side effect of the manner in which they perform their primary function (e.g., fuel injectors or combustion chambers).

Engine-out emissions means the emissions coming out of the engine before they are changed, captured, or otherwise affected by the emissions control system.

Final acceptance means that a recipient has released the FTA-provided funds to a bus manufacturer or dealer in connection with a bus procurement.

Gross weight (gross vehicle weight) means the curb weight of the bus plus passengers simulated by adding 150 pounds of ballast to each seating position and 150 pounds for each 1.5 square foot of free floor space.

Hybrid means a propulsion system that combines two power sources, at least one of which is capable of capturing, storing, and re-using energy.

Major change in chassis design means, for vehicles manufactured on a third-party chassis, a change in frame structure, material or configuration, or a change in chassis suspension type.

Major change in components means:

(1) For those vehicles that are not manufactured on a third-party chassis, a change in a vehicle's engine, axle, transmission, suspension, or steering components;

(2) For those that are manufactured on a third-party chassis, a change in the vehicle's chassis from one major design to another.

Major change in configuration means a change that is expected to have a significant impact on vehicle handling and stability or structural integrity.

Modified third-party chassis or van means a vehicle that is manufactured from an incomplete, partially assembled third-party chassis or van as provided by an OEM to a small bus manufacturer. This includes vehicles whose chassis structure has been modified to include: a tandem or tag axle; a drop or lowered floor; changes to the GVWR from the OEM rating; or other modifications that are not made in strict conformance with the OEM's modifications guidelines.

New bus model means a bus model that—

(1) Has not been used in public transportation service in the United States before October 1, 1988; or

(2) Has been used in such service but which after September 30, 1988, is being produced with a major change in configuration or a major change in components.

Operator means the operator of the bus testing facility.

Original equipment manufacturer (OEM) means the original manufacturer of a chassis or van supplied as a complete or incomplete vehicle to a bus manufacturer.

Parking brake means a system that prevents the bus from moving when

parked by preventing the wheels from rotating.

Partial test(ing) report means a report documenting, for a previously-tested bus model that is produced with major changes, the results of performing only that subset of the complete set of bus tests in which significantly different data would reasonably be expected as a result of the changes made to the bus from the configuration documented in the original full bus testing report. A partial testing report is not valid unless accompanied by the corresponding full Bus Testing Report.

Partial testing means the performance of only that subset of the complete set of bus tests in which significantly different data would reasonably be expected compared to the data obtained in previous full testing of the baseline bus model at the bus testing facility.

Public transportation service means the operation of a vehicle that provides general or special service to the public on a regular and continuing basis.

Recipient means an entity that receives funds under 49 U.S.C. 5307, 5309, 5310, or 5311, either directly from FTA or through a State administering agency.

Regenerative braking system means a system that decelerates a bus by recovering its kinetic energy for on-board storage and subsequent use.

Retarder means a system other than the service brakes that slows a bus by dissipating kinetic energy.

Seated load weight means the weight of the bus plus driver, fuel, and seated passengers simulated by adding 150 pounds of ballast to each seating position.

Service brake(s) means the primary system used by the driver during normal operation to reduce the speed of a moving bus and to allow the driver to bring the bus to a controlled stop and hold it there. Service brakes may be supplemented by retarders or by regenerative braking systems.

Small bus manufacturer means a secondary market assembler that acquires a chassis or van from an original equipment manufacturer for subsequent modification or assembly and sale as 5-year/150,000-mile or 4-year/100,000-mile minimum service life vehicle.

Tailpipe emissions means the exhaust constituents actually emitted to the atmosphere at the exit of the vehicle tailpipe or corresponding system.

Third party chassis means a commercially available chassis whose design, manufacturing, and quality control are performed by an entity independent of the bus manufacturer.

Unmodified mass-produced van means a van that is mass-produced, complete and fully assembled as provided by an OEM. This shall include vans with raised roofs, and/or wheelchair lifts, or ramps that are installed by the OEM, or by a party other than the OEM provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

Unmodified third-party chassis means a third-party chassis that either has not been modified, or has been modified in strict conformance with the OEM's modification guidelines.

§ 665.7 Grantee certification of compliance.

(a) In each application to FTA for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by the FTA, the recipient shall certify that the bus was tested at the bus testing facility. The recipient shall receive the appropriate full bus testing report and any applicable partial testing report(s) before final acceptance of the first vehicle by the recipient.

(b) In dealing with a bus manufacturer or dealer, the recipient shall be responsible for determining whether a vehicle to be acquired requires full testing or partial testing or has already satisfied the requirements of Part 665.

Subpart B—Bus Testing Procedures

§ 665.11 Testing requirements.

(a) A new bus model to be tested at the bus testing facility shall—

(1) Be a single model;

(2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in Part 571 of this title; and

(3) Be substantially fabricated and assembled using the techniques, tooling, and materials that will be used in production of subsequent buses of that model.

(b) If the new bus model has not previously been tested at the bus testing facility, then the new bus model shall undergo the full tests requirements for Maintainability, Reliability, Safety, Performance including braking performance, Structural Integrity, Fuel Economy, Noise, and Emissions;

(c) If the new bus model has not previously been tested at the bus testing facility and is being produced on a third-party chassis that has been previously tested on another bus model at the bus testing facility, then the new bus model may undergo partial testing requirements;

(d) If the new bus model has previously been tested at the bus testing facility, but is subsequently manufactured with a major change in chassis or components, then the new bus model may undergo partial testing.

(e) The following vehicle types shall be tested:

(1) Large-size, heavy-duty transit buses (approximately 35'–40' in length, as well as articulated buses) with a minimum service life of 12 years or 500,000 miles;

(2) Medium-size, heavy-duty transit buses (approximately 30' in length) with a minimum service life of ten years or 350,000 miles;

(3) Medium-size, medium duty transit buses (approximately 30' in length) with a minimum service life of seven years or 200,000 miles;

(4) Medium-size, light duty transit buses (approximately 25'–35' in length) with a minimum service life of five years or 150,000 miles; and

(5) Other light duty vehicles such as small buses and regular and specialized vans with a minimum service life of four years or 100,000 miles.

(f) Tests performed in a higher service life category (i.e., longer service life) need not be repeated when the same bus model is used in lesser service life applications.

(g) The operator of the bus testing facility shall develop a test plan for the testing of vehicles at the facility. The test plan shall follow the guidelines set forth in Appendix A of this Part.

§ 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide the resulting test report to the entity that submitted the bus for testing.

(b)(1) A manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to a recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a bus testing report has a change that is not a major change under this Part, the manufacturer or dealer shall advise the recipient during the procurement process and shall include a description of the change and the manufacturer's

basis for concluding that it is not a major change.

(d) A bus testing report shall be available publicly once the bus manufacturer makes it available during a recipient's procurement process. The operator of the facility shall have copies of all the publicly available reports available for distribution.

(e) The bus testing report is the only information or documentation that shall be made publicly available in connection with any bus model tested at the bus testing facility.

Subpart C—Operations

§ 665.21 Scheduling.

(a) To schedule a bus for testing, a manufacturer shall contact the operator of FTA's Bus Testing Program. Contact information and procedures are available on the operator's Bus Testing Web site, *http://www.altoonabustest.com.*

(b) Upon contacting the operator, the operator shall provide the manufacturer with the following:

(1) A draft contract for the testing;

(2) A fee schedule; and

(3) The draft test procedures that will be conducted on the vehicle.

(c) The operator shall provide final test procedures to be conducted on the vehicle at the time of contract execution.

(d) The operator shall process vehicles for testing in the order in which the contracts are signed.

§ 665.23 Fees.

(a) The operator shall charge fees in accordance with a schedule approved by FTA, which shall include different fees for partial testing.

(b) Fees shall be prorated for a vehicle withdrawn from the bus testing facility before the completion of testing.

§ 665.25 Transportation of vehicle.

A manufacturer shall be responsible for transporting its vehicle to and from the bus testing facility at the beginning and completion of the testing at the manufacturer's own risk and expense.

§ 665.27 Procedures during testing.

(a) The operator shall perform all maintenance and repairs on the test vehicle, consistent with the manufacturer's specifications, unless the operator determines that the nature of the maintenance or repair is best performed by the manufacturer under the operator's supervision.

(b) The manufacturer shall be permitted to observe all tests. The manufacturer shall not provide maintenance or service unless requested to do so by the operator.

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

The eight tests to be performed on each vehicle are required by SAFETEA–LU and are based in part on tests described in the FTA report ''First Article Transit Bus Test Plan,'' which is mentioned in the legislative history of section 317 of STURAA. When appropriate, Society of Automotive Engineers (SAE) test procedures and other procedures accepted by the transit industry will be used. The eight tests are described in general terms in the following paragraphs.

1. Maintainability

The Maintainability test should include bus servicing, preventive maintenance, inspection, and repair. It also should include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus's normal life cycle. Much of the maintainability data should be obtained during the bus durability test at the test track. Up to twenty-five percent of the bus life should be simulated and servicing, preventive maintenance, and repair actions should be recorded and reported. These actions should be performed by test facility staff, although manufacturers should be allowed to maintain a representative on site during the testing. Test facility staff may require a manufacturer to provide vehicle servicing or repair, under the supervision of the facility staff. Because the operator will not become familiar with the detailed design of all new bus models that are tested, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance should be carried out by the test operator in accordance with the manufacturer's specifications.

The Maintainability test report should include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user should be included in the report.

2. Reliability

Reliability should not be a separate test, but should be addressed by recording all bus failures and breakdowns during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests. The detected bus failures, repair time, and the actions required to return the bus to operation should be recorded in the report.

3. Safety

The Safety test should consist of a handling and stability test. The handling and stability test should be an obstacle avoidance or double-lane change test performed at the test track. Bus speed should be held constant throughout a given test run. Individual test runs should be made at increasing speeds up to a specified maximum or until the bus can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes should be tested.

4. Performance

The Performance test should be performed on the test track and should measure acceleration, maximum speed attained, gradeability, and braking. The bus should be accelerated at full throttle from a full stop to maximum safe speed on the track. The gradeability capabilities should be measured when starting from a full stop on a steep grade, and supplemented by calculating gradeability based on the acceleration data. The functionality and performance of the service, regenerative (if applicable), and parking brake systems should be evaluated at the test track. The test bus should be subjected to a series of brake stops from specified speeds on high, low, and split-friction surfaces. The parking brake should be evaluated with the bus parked facing both up and down a steep grade.

5. Structural Integrity

Two complementary Structural Integrity tests should be performed. Structural Strength and Distortion tests should be performed at the Bus Testing Center, and the Structural Durability test should be performed at the test track.

a. Structural Strength and Distortion Tests

(1) A shakedown of the bus structure should be conducted by loading and unloading the bus with a distributed load equal to 2.5 times the load applied for the gross weight portions of testing. The bus should then be unloaded and inspected for any permanent deformation on the floor or coach structure. This test should be repeated a second time, and should be repeated up to one more time if the permanent deflections vary significantly between the first and second tests.

(2) The bus should be loaded to gross vehicle weight, with one wheel on top of a curb and then in a pothole. This test should be repeated for all four wheels. The test verifies:

(a) Normal operation of the steering mechanism and (b) Operability of all passenger doors, passenger escape mechanisms, windows, and service doors. A water leak test should be conducted in each suspension travel condition.

(3) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the curb weight should be applied to the bus towing fixtures (front and rear). The load should be removed and the two eyes and adjoining structure inspected for damages or permanent deformations.

(4) The bus should be towed at curb weight with a heavy wrecker truck for several miles and then inspected for structural damage or permanent deformation.

(5) With the bus at curb weight probable damages and clearance issues due to tire deflating and jacking should be assessed.

(6) With the bus at curb weight possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands should be assessed.

b. Structural Durability

The Structural Durability test should be performed on the durability course at the test track, simulating twenty-five percent of the

vehicle's normal service life. The bus structure should be inspected regularly during the test, and the mileage and identification of any structural anomalies and failures should be reported in the Reliability test.

6. Fuel Economy

The Fuel Economy test should be conducted using duty cycles that simulate transit service. This test should measure the fuel economy of the bus in miles per gallon or other energy-equivalent units.

The Fuel Economy test should be designed only to enable FTA recipients to compare the relative fuel economy of buses operating at a consistent loading condition on the same set of typical transit driving cycles. The results of this test are not directly comparable to fuel economy estimates by other agencies, such as the U.S. Environmental Protection Agency (EPA) or for other purposes.

7. Noise

The Noise test should measure interior noise and vibration while the bus is idling (or in a comparable operating mode) and driving, and also should measure the transmission of exterior noise to the interior while the bus is not running. The exterior noise should be measured as the bus is operated past a stationary measurement instrument.

8. Emissions

The Emissions test should measure tailpipe emissions of those exhaust constituents regulated by the United States Environmental Protection Agency (EPA) for transit bus emissions, plus carbon dioxide (CO_2) and methane (CH_4), as the bus is operated over specified driving cycles. The Emissions test should be conducted using an emissions testing laboratory equipped with a chassis dynamometer capable of both absorbing and applying power.

The Emissions test is not a certification test, and is designed only to enable FTA recipients to compare the relative emissions of buses operating on the same set of typical transit driving cycles. The results of this test are not directly comparable to emissions measurements obtained by other agencies, such as the EPA, for other purposes.

Issued on: September 24, 2008.

Sherry E. Little,

Deputy Administrator.

[FR Doc. E8–22913 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 73, No. 190
Tuesday, September 30, 2008

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Pacific Southwest Region, Forest Service, U.S. Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Pacific Southwest Recreation Resource Advisory Committee (Recreation RAC) will hold a meeting in Sacramento, California. The purpose of this meeting is to make recommendations for fee proposals on lands managed by the Forest Service and Bureau of Land Management in California. The Recreation RRAC will consider fee proposals for increases in expanded amenity fees and the elimination of an expanded amenity fee from the Klamath National Forest. In addition presentations will be made on Recreation Facility Analysis, campground concessionaire program and future fee concepts from the Forest Service.

DATES: The meeting will be held October 16, 2008 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the BLM California Office, 2800 Cottage Way, W–1928, Sacramento, CA 95825. Send written comments to Marlene Finley, Designated Federal Official for the Pacific Southwest Region Recreation RAC, 1323 Club Drive, Vallejo, CA 94592, 707–562–8856 or *mfinley01@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Marlene Finley, Designated Federal Official, Pacific Southwest Region Recreation RAC, 1323 Club Drive, Vallejo, CA 94592.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service and Bureau of Land Management staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided during the meeting and individuals who wish to address the Recreation RAC will have an opportunity at 9:30 a.m. on October 16. Comments will be limited to three minutes per person. The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: September 22, 2008.

Greg Greenway,

Acting for Designated Federal Official, Recreation RAC, Pacific Southwest Region.

[FR Doc. E8–22771 Filed 9–29–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. Committee members will address policy, research, and technical issues related to 2010 Decennial Census Programs. Working groups will be convened to assist in planning efforts for the 2010 Census and the American Community Survey. Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: October 23–24, 2008. On October 23, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On October 24, 2008, the meeting will begin at approximately 8:30 a.m. and end at approximately 3 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium and Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H153, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The 2010 Census Advisory Committee is composed of a Chair, Vice-Chair, and 20 member organizations—all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census, including the American Community Survey and related programs, and users' needs for information provided by the decennial census from the perspective of outside data users and other organizations having a substantial interest and expertise in the conduct and outcome of the decennial census. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign-language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: September 23, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–22918 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on October 16, 2008, 9 a.m., Room

3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Review on September 2008 Wassenaar Expert's Meeting.
4. Discussion on 2009 Proposals.
5. Report on proposed changes to the Export Administration Regulations.
6. Other Business.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than October 9, 2008.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 16, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 sections (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)1 and 10(a)(3).

The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: September 25, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–22986 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0809191238–81241–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals for Fiscal Year 2010

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed disposal levels of excess materials for the Fiscal Year (FY) 2010 Annual Materials Plan.

DATES: To be considered, written comments must be received by October 30, 2008.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue, NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), e-mail: *MIC@bis.doc.gov*; or Peter Secor, U.S. Department of State, Bureau of Economic and Business Affairs, Office of International Energy and Commodity Policy, Washington, DC 20520, fax: (202) 647–8758 (Attn: Peter Secor), or e-mail: *SecorPF@state.gov*.

FOR FURTHER INFORMATION CONTACT: David Newsom, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–7417.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98, *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials contained in the stockpile.

In Attachment 1, the Defense National Stockpile Center (DNSC) lists the proposed quantities that are enumerated in the stockpile inventory for the FY 2010 Annual Materials Plan. The Committee is seeking public comments on the potential market impact of the sale of these materials. Public comments are an important element of the Committee's market impact review process.

The quantities listed in Attachment 1 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DNSC. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. All comments must be submitted to the address indicated in this notice. All comments submitted through e-mail must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on October 30, 2008. The Committee will consider all comments received before the close of the comment period.

Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: September 22, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

ATTACHMENT 1—PROPOSED FY 2010 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Bauxite, Metallurgical Jamaican	LDT	5,000	(1)
Beryl Ore	ST	1	(1)
Beryllium Metal	ST	60	
Chromium, Ferro	ST	100,000	
Chromium, Metal	ST	1,000	
Cobalt	LB Co	1,000,000	(1)
Columbium Metal Ingots	LB Cb	10,000	(1)
Germanium	Kg	8,000	
Manganese, Chemical Grade	SDT	5,000	(1)
Manganese, Ferro	ST	100,000	
Manganese, Metallurgical Grade	SDT	100,000	(1)
Platinum	Tr Oz	9,000	(1)
Platinum-Iridium	Tr Oz	1,000	(1)
Talc	ST	1,000	(1)
Tantalum Carbide Powder	LB Ta	4,000	(1)
Tin	MT	4,000	(1)
Tungsten Metal Powder	LB W	300,000	
Tungsten Ores & Concentrates	LB W	8,000,000	
VTE, Quebracho	LT	6,000	(1)
Zinc	ST	8,500	(1)

[1] Actual quantity will be limited to remaining inventory.

[FR Doc. E8–22734 Filed 9–29–08; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 080507636–8637–01]

Revisions to the Unverified List—Guidance as to ''Red Flags'' Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks (''PLC'') or post-shipment verifications (''PSV'') could not be conducted for reasons outside the control of the U.S. Government (''Unverified List''). Additionally, on July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. These notices advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a ''red flag'' as described in the guidance set forth in Supplement No. 3 to 15 CFR Part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notices also stated that, when warranted, BIS would remove persons from the Unverified List. This notice removes one entity from the Unverified List based upon recently conducted PSVs or scheduled PSVs. The entity is: Fuchs Oil Middle East Ltd., P.O. Box 7955, Sharjah Airport Intl. Free Zone, Sharjah, United Arab Emirates.

DATES: This notice is effective September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Todd E. Willis, Assistant Director, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone Number: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR Parts 730 to 774) (''EAR''), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, conduct PLCs in appropriate situations to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in export transactions where BIS officials, or other

federal officials acting on BIS's behalf, were unable to perform a PLC or PSV with respect to certain export transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). On July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. The notices further stated that BIS may periodically remove names of persons from the list when warranted.

On October 19, 2006, BIS added to the Unverified List Fuchs Oil Middle East Ltd., P.O. Box 7955, Sharjah Airport Intl. Free Zone, Sharjah, United Arab Emirates because BIS was unable to conduct a PLC, a PSV, and/or was unable to verify the existence or authenticity of an end user, intermediate consignee, ultimate consignee, or other party to an export transaction. 71 FR 61706. This notice removes the Fuchs Oil Middle East Ltd. entry from the Unverified List because BIS recently conducted or scheduled a PSV.

The Unverified List, as modified by this notice, is set forth below.

Dated: September 12, 2008.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

Unverified List (As of May 2, 2008)

The Unverified List includes names, countries, and last known addresses of foreign persons involved in export transactions with respect to which: the Bureau of Industry and Security (''BIS'') could not conduct a pre license check (''PLC'') or a post shipment verification (''PSV'') for reasons outside of the U.S. Government's control; BIS was not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee or other party to an export transaction; and/or the person is affiliated with a person on the Unverified List by virtue of ownership, control, position of responsibility, or other affiliation or connection in the conduct of trade or business. Any transaction to which a listed person is a party will be deemed to raise a ''red flag'' with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR Part 732. The red flag applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region.	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN. BHD.	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park.
Lucktrade International PTE Ltd.	Singapore	35 Tannery Road #01–07 Tannery Block, Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.
Jetpower Industrial Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Onion Enterprises Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Lucktrade International	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Litchfield Co. Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Sunford Trading Ltd	Hong Kong Special Administrative Region.	Unit 2208, 22/F118 Connaught Road West.
Parrlab Technical Solutions, LTD.	Hong Kong Special Administrative Region.	1204, 12F Shanghai Industrial Building, 48–62 Hennesey Road, Wan Chai.
T.Z.H. International Co. Ltd	Hong Kong Special Administrative Region.	Room 23, 2/F, Kowloon Bay Ind Center, No. 15 Wany Hoi Rd, Kowloon Bay.
Design Engineering Center	Pakistan	House 184, Street 36, Sector F–10/1, Islamabad.
Kantry	Russia	13/2 Begovaya Street, Moscow.
Etalon Company	Russia	20B Berezhkovskaya Naberezhnaya, Moscow.
Pskovenergo Service	Russia	47–A Sovetskaya Street, Pskov, Russia Federation, 180000.
Sheeba Import Export	Yemen	Hadda Street, Sanaa.
Aerospace Consumerist Consortium FZCO.	United Arab Emirates	Sheikh Zayed Road, P.O. Box 17951, Jebel Ali Free Zone, Dubai and Dubai International Airport, Dubai, 3365.
Medline International LLC	United Arab Emirates	P.O. Box 86343, Dubai.
Al Aarif Factory Equipment Trading LLC.	United Arab Emirates	Sheikh Fahad Saad Alsbah Bldg., Al Maktoum Street, P.O. Box 28162, Dubai, UAE (also located in Al Quoz district of Dubai).
Al-Thamin General Trading LLC.	United Arab Emirates	P.O. Box 41364, Dubai, UAE.
Amiran Trading Company	United Arab Emirates	Arbift Tower, 1st Floor, Flat No. 1803, Deira, UAE, also P.O. Box 6 1463, Jebel Ali, Dubai, UAE.
Bazar Trading Co	United Arab Emirates	Baniyas Tower, Suite 212, Dubai, UAE.
Davood Khosrojerdi, dba Al Musafer Tourism and Cargo.	United Arab Emirates	Concord Tower, Al Maktoum Street, PO Box 77900, Dubai, UAE.
Part Tech Co	United Arab Emirates	Baniyas Tower, Suite 212, Dubai, UAE.
Parto Abgardan	United Arab Emirates	Showroom #5, Sheikh Rashid bin Khalifa al Maktoum building, Dubai, UAE.
Reza Nezam Trading	United Arab Emirates	Al Dana Center, Al Maktoum Street, P.O. Box 41382, Dubai, UAE.
Sarelica (Sar Elica) FZC	United Arab Emirates	Bldg. #3, Office No. 3 G–08, P.O. Box 41 71 0, Hamariya Free Zone, Sharjah, UAE.
Semicom Technology International LLC.	United Arab Emirates	Office No. 18, 6th Floor, Horizons Business Centre, Al-Doha Centre, Al-Maktoum St., P.O. Box 41096, Dubai, UAE.

Name	Country	Last known address
Vitaswiss Limited	United Arab Emirates	PO Box 61069, Office #R/A 8 CB03, UAE.
Centre Bright Company	Hong Kong Special Administrative Region.	Unit 7A, Nathan Commercial Building, 430–436 Nathan Road, Kowloon City, Hong Kong.
IC Trading Ltd	Russia	Yauzskaya Str. 8, Bldg 2, Moscow, Russia.
Al Minzal Medical Equipment & Instruments.	United Arab Emirates	P.O. Box 31107, Sharjah, UAE.
JSC Chop Vityaz-S	Russia	146 Unikh Pionerov Ave, Samara, Russia.
Sistem Dizayners Co	Baku, Azerbaijan	APA: 2 NO.: 60, Merdanov Gardashlari St., Baku, Azerbaijan.

[FR Doc. E8–22985 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

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

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

DATES: *Effective Date:* September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2007), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Frozen Fish Fillets from the Socialist Republic of Vietnam and Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea with respect to one exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Act. Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2,1994) (*Silicon Carbide*). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register**. In responding to the certification, please

follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

For entities that have not previously been assigned a separate rate, to demonstrate eligibility for such, the Department requires a Separate Rate Status Application. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2009.

	Period to be reviewed
Antidumping Duty Proceedings	
Italy: Granular Polytetrafluoroethylene Resin, A–475–703	8/1/07–7/31/08
Solvay Solexis S.p.A.	
Malaysia: Polyethylene Retail Carrier Bags, A–557–813	8/1/07–7/31/08
Europlastics Malaysia Sdn. Bhd. and the Eplastics Procurement Center Sdn. Bhd.	
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/07–7/31/08
Dongbu Steel Co., Ltd.	
Dongkuk Industries Co., Ltd.	
Haewon MSC Co., Ltd.	
Hyundai HYSCO.	
LG Chem, Ltd.	
Pohang Iron and Steel Co., Ltd./Pohang Coated Steel Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
Socialist Republic of Vietnam: Frozen Fish Fillets,[1] A–552–801	8/1/07–7/31/08
An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or AnGiang Fisheries Import and Export).	
An Xuyen Co., Ltd.	
Anvifish Co., Ltd.	
Asia Commerce Fisheries Joint Stock Company (aka as Acomfish JSC).	
Ben Tre Forestry Aquaproduct Import-Export Company (aka as FAQUIMEX).	
Binh An Seafood Joint Stock Co.	
Da Nang Seaproducts Import-Export Corporation (aka Da Nang or Seaprodex Danang).	
East Sea Seafoods Joint Venture Co., Ltd.	
Hiep Thanh Seafood Joint Stock Co.	
Hung Vuong Corporation.	
Nam Viet Company Limited (aka NAVICO).	
Phuong Nam Co., Ltd.	
QVD Food Company, Ltd.	
QVD Dong Thap Food Co., Ltd.	
Southern Fishery Industries Company, Ltd. (aka South Vina).	
Thien Ma Seafood Co., Ltd.	
Thuan Hung Co., Ltd. (aka THUFICO).	
Vinh Hoan Corporation.	
Vinh Hoan Company, Ltd.	
Vinh Quang Fisheries Corporation.	
Thailand: Polyethylene Retail Carrier Bags, A–549–821	8/1/07–7/31/08
C.P. Packaging Co., Ltd.	
C.P. Poly-Industry Co. Ltd.	
Master Packaging Co., Ltd.	
Naraipak Co., Ltd.	
Nari Packaging (Thailand) Ltd.	
Poly Plast (Thailand) Co., Ltd.	
Thai Plastic Bags Industries Co., Ltd.	
The People's Republic of China: Floor-Standing Metal-Top Ironing Tables,[2] A–570–888	8/1/07–7/31/08
Foshan Shunde Yongjian Housewares & Hardware Co., Ltd.	
Since Hardware (Guangzhou) Co., Ltd.	
The People's Republic of China: Polyethylene Retail Carrier Bags,[3] A–570–886	8/1/07–7/31/08
Rally Plastics Co., Ltd.	
Countervailing Duty Proceedings	
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, C–580–818	1/1/07–12/31/07
Dongbu Steel Co., Ltd.	
Hyundai HYSCO.	
Pohang Iron & Steel Co., Ltd.	
Republic of Korea: Dynamic Random Access Memory Semiconductors, C–580–851	1/1/07–12/31/07
Hynix Semiconductor, Inc.	
Suspension Agreements	
None	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–23088 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of frozen fish fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of floor-standing metal-top ironing tables from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of polyethylene retail carrier bags from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, October 28, 2008, from 8 a.m. to 5 p.m. and Wednesday, October 29, 2008, from 8:30 a.m. to 12:30 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The theme for the meeting is ''NIST's Roles in Innovation and NIST's Strategic Plan.'' The agenda will include an update on NIST, presentations on Safety at NIST, a review of NIST's roles in innovation, a review of NIST's external relationships, and an overview of NIST's Strategic Plan, followed by an update on the Biosciences Strategic Plan, the status of the Nanotechnology Strategic Plan, and a presentation on the NIST Facilities Strategic Plan. Guest speakers have been invited to address the benefits and potential benefits of selected NIST partnerships. Other agenda items include laboratory tours and a VCAT feedback session on draft recommendations for the 2008 Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm.*

DATES: The meeting will convene on October 28, 2008, at 8 a.m. and will adjourn on October 29, 2008, at 12:30 p.m.

ADDRESSES: The meeting will be held in Building 1, Room 1107, at the National Institute of Standards and Technology, Boulder, Colorado 80305.

Anyone wishing to attend this meeting should submit name, e-mail address and phone number to Denise Herbert (*denise.herbert@nist.gov* or 301–975–5607) no later than October 10, 2008.

FOR FURTHER INFORMATION CONTACT: Denise Herbert, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–2300.

Dated: September 23, 2008.

Patrick Gallagher,

Deputy Director.

[FR Doc. E8–22987 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080626787–81233–04]

RIN 0648–ZB96

Availability of Grant Funds for Fiscal Year 2009

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to add proposal format requirements, place a limit on proposed indirect costs, further clarify cost sharing requirements and change the full proposal submission deadline to November 3, 2008 for the solicitation ''Saltonstall-Kennedy Grant Program,'' in order to give the public more time to respond to these new requirements. The initial solicitation, which was originally announced in the **Federal Register** on July 11, 2008, gave a proposal due date of October 1, 2008.

DATES: Applications must be received by 5 p.m. Eastern Time on November 3, 2008. Applications received after the deadline will be rejected/returned to the sender without further consideration. No facsimile or electronic mail applications will be accepted.

ADDRESSES FOR SUBMITTING PROPOSALS: Applications must be submitted through *www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to: Mr. Steve Aguzin, S-K Program Manager, NOAA/NMFS (F/MB5), 1315 East-West Highway, Room 13134, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: The point of contact is: Steve Aguzin, S-K Program Manager, NOAA/NMFS (F/MB5), 1315 East-West Highway, Room 13134, Silver Spring, MD 20910–3282; or by Phone at (301) 713–2358 ext. 215, or fax at (301) 713–1306, or via E-mail at *Stephen.Aguzin@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to add proposal format requirements, place a limit on proposed indirect costs, further clarify cost sharing requirements and change the full proposal submission deadline to November 3, 2008 for the solicitation ''Saltonstall-Kennedy Grant Program,'' announced in the **Federal Register** on July 11, 2008 (73 FR 40052). The deadline for full submissions is changed from October 1, 2008 to November 3, 2008 in order to give the public more time to respond to these new requirements. All other requirements for this solicitation remain the same.

Application And Submission Information

You must follow the instructions in this document in order to apply for a grant or cooperative agreement under the Saltonstall-Kennedy Grant Program. Your application must be complete and must follow the format described here.

A. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Form 424 and 424B as the cover sheet for each project.

B. Project Summary

You must complete a Project Summary for each project. You must list the specific priority to which the application responds.

C. Project Budget

You must submit a budget for each project and provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions. Specify estimates of the direct costs in the categories listed on the Project Budget form.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. For this solicitation, the total dollar amount of the indirect costs you propose in your application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Furthermore, the Federal share of the indirect costs you propose may not exceed 25 percent of the total proposed direct costs. If your application requests more than 25 percent of the total costs as Federal funds to cover indirect costs, the application will be returned to you and will not be considered for funding.

If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25–percent level up to the 100–percent level as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application.

We will not consider fees or profits as allowable costs in your application.

The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

D. Narrative Project Description

You must provide a narrative description of your project that may be up to 25 pages long. All pages must be single-spaced and should be composed in at least a 12–point font with one-inch margins on 8 1/2 x 11 paper. The project description may not exceed 25 pages, exclusive of the title page, project synopsis, literature cited, budget information, and resumes of investigator. Any PDF or other attachments that are included in an electronic application must meet the above format requirement when printed out. Failure to follow the requirements will result in the rejection of the application and subsequent return.

The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

1. *Project goals and objectives*. Identify the specific priority listed earlier in the solicitation to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. State what you expect the project to accomplish.

If you are applying to continue a project we previously funded under the S-K Program, describe in detail your progress to date and explain why you need additional funding. We will consider this information in evaluating your current application.

2. *Project impacts*. Describe the anticipated impacts of the project on the fishing community in terms of reduced bycatch, increased product yield, or other measurable benefits. Describe how you will make the results of the project available to the public.

3. *Evaluation of project*. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

4. *Need for government financial assistance*. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

5. *Federal, state, and local government activities and permits*. List any existing Federal, state, or local government programs or activities that this project would affect, including activities requiring: certification under state Coastal Zone Management Plans; section 404 or section 10 permits issued by the Corps of Engineers; experimental fishing or other permits under FMPs; environmental impact statements to meet the requirements of the National Environmental Policy Act; scientific permits under the ESA and/or the Marine Mammal Protection Act; or Magnuson-Stevens Act EFH consultation if the project may adversely affect areas identified as EFH. Describe the relationship between the project and these FMPs or activities, and list names and addresses of persons providing this information. You can get information on these activities from the NMFS Regions (see Section I.F., Application ADDRESSES). If we select your project for funding, you are responsible for complying with all applicable requirements.

6. *Project statement of work*. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(b) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting.)

(c) What are the major products and how will project results be disseminated? Describe products of the project, such as a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(d) What are the project milestones? List milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities.

This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

7. *Participation by persons or groups other than the applicant.* Describe how government and non-government entities, particularly members of fishing communities, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the fishing community in determining which applications to fund.

8. *Project management.* Describe how the project will be organized and managed. Identify the principal investigator and other participants in the project. If you do not identify the principal investigator, we will return your application without further consideration. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Provide a statement no more than two pages long of the qualifications and experience (e.g., resume or curriculum vitae) of the principal investigator(s) and any consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, ''Grants and Cooperative Agreements to State and Local Governments,'' and 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations.'' If you select a consultant and/or a subcontractor prior to submitting an application, indicate the process that you used for selection.

E. Supporting Documentation

You should include any relevant documents and additional information (i.e., maps, background documents) that will help us to understand the project and the problem/opportunity you seek to address.

Cost Sharing Requirements

We are requiring cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, industry, and academia to address the needs of fishing communities. You must provide a minimum cost share of 10 percent of total project costs, but your cost share must not exceed 50 percent of total costs.

You may find this formula useful:

1. Total Project Cost (Federal and non-Federal cost share combined) x .9 = Maximum Federal Share.

2. Total Cost - Federal share = Applicant Share.

For example, if the proposed total budget for your project is $100,000, the maximum Federal funding you can apply for is $90,000 ($100,000 x .9). Your cost share in this case would be $10,000 ($100,000 - $90,000).

For a total project cost of $100,000, you must contribute at least $10,000, but no more than $50,000 (10–50 percent of total project cost). Accordingly, the Federal share you apply for would range from $50,000 to $90,000. If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding.

The funds you provide as cost sharing may include funds from private sources or from state or local governments, or the value of in-kind contributions. You may not use Federal funds to meet the cost sharing requirement except as provided by Federal statute. In-kind contributions are non-cash contributions provided to you by non-Federal third parties. In-kind contributions may include, but are not limited to, personal services volunteered to perform tasks in the project, and permission to use, at no cost, real or personal property owned by others.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in 15 CFR parts 14 and 24. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated. You must document the in-kind services or property you will use to fulfill your cost share.

If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2009 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet *http://www.dunandbradstreet.com*.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216--6--TOC.pdf*, NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.hss.doe.gov/nepa/regs/ceq/toc__ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible

construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, 424C, 424D, and SF-LLL has been approved by OMB under the respective control numbers 4040–0004, 0348–0044, 4040–0007, 0348–0041, 4040–0009, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 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 or any other law 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 has not been prepared.

Dated: September 24, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8–22970 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–PJ–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB13

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; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Eglin Air Force Base (EAFB) for the take of marine mammals, by Level B harassment only, incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations at EAFB, Florida.

DATES: Effective from October 5, 2008, through October 4, 2009.

ADDRESSES: A copy of the IHA and the application are available by writing 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, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online 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 or 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 military readiness activity 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 will 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 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 30–day public notice and comment period on any proposed IHA. 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 re-issuance of their IHA for the taking, by Level B harassment only, 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). Each of up to six missions per year would include up to five 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) offshore. Because this activity will be a multi-year activity, NMFS also plans to develop proposed regulations for NEODS training operations at EAFB. EAFB was granted an IHA in 2005, 2006, and 2007 for this activity. No missions have occurred to date.

Because the relative low cost and ease of use of mines lends itself to use by an array of transnational, rogue, and subnational adversaries that now pose the most immediate threat to American interests and because NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries, this activity constitutes a ''military readiness activity,'' as defined in Section 315(f) of Public Law 107–314 (16 U.S.C. 703 note).

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 plans 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 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 hand-held 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 hand-held 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 is contained in the initial **Federal Register** notice (73 FR 46592, August 11, 2008) and application, which is available upon request (see **ADDRESSES**).

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 (*Trichechus manatus*). While a few manatees may migrate as far north from southern Florida (where they are generally confined in the winter) to Louisiana in the summer, they primarily inhabit coastal and inshore waters, rarely venture offshore, and sightings of manatees in the EGTTR are rare. Dwarf (*Kogia sima*) and pygmy sperm whales (*Kogia breviceps*), 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, impact 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. Accordingly, EAFB did not seek an incidental take authorization from the U.S. Fish and Wildlife Service, which has jurisdiction over manatees.

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 that may be affected by these activities, whose status and distribution were discussed in the proposed IHA (73 FR 46592, August 11, 2008), are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Although Atlantic spotted dolphins do not normally inhabit nearshore waters, NMFS has included them in the analysis due to the potential for occurrence and to ensure conservative mitigation measures are applied. Further descriptions of the biology and local distribution of these species can be found in the application (see **ADDRESSES**); 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*.

Potential Effects of Activities on Marine Mammals

The primary potential impact to Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the planned detonations is Level B harassment from noise and energy 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 required 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 document 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) indicates a 30–percent incidence of permanent threshold shift (PTS) at the same threshold). 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 μPa² 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 under debate. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 μPa² s. However, due 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.

Comments and Responses

On July 12, 2007, NMFS published in the **Federal Register** a notice of a proposed IHA for EAFB's request to take marine mammals incidental to NEODS training exercises in the GOM, and requested comments regarding this request (See 72 FR 38061). During the 30–day public comment period, NMFS received one public comment and comments from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommends NMFS grant the requested authorizations provided that Eglin AFB conduct all practicable monitoring and mitigation measures to afford the potentially affected marine mammal species adequate protection from serious and lethal injury.

Response: NMFS believes that the IHA includes all practicable monitoring and mitigation measures to avoid serious or lethal injury of marine mammals, and we believe that they will be effective. The radius around the site of the explosion where the animals could potentially be injured is 52 m, and animals would have to be significantly closer than that for the potential for serious injury or death to occur. Marine Mammal Observers (MMOs) will be monitoring a 460–m radius area for the entire 15 minutes leading up to the detonation and the operation will be postponed if animals are seen within the 230–dB ZOI or if large schools of fish, which could attract the delphinids, are seen within the ZOI.

Comment 2: The Commission recommends that NEODS training operations be suspended immediately if a seriously injured or dead marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the NEODS activities. Further, the Commission recommends that any suspension should remain in place until NMFS has (1) reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with the Commission's recommendation and will include this provision in the IHA.

Comment 3: The Commission also resubmitted the identical comments it submitted on the 2005 and 2006 NEODS IHA. In summary, the Commission recommends NMFS should further explain its rationale for determining that the takings will be by harassment only and that the potential for lethal injuries is sufficiently remote to warrant the issuance of an authorization under 101(a)(5)(d) of the MMPA. In addition, the Commission questioned NMFS' assessment that TTS constitutes no more than Level B harassment and NMFS should further explain and justify the dual criteria established for determining non-lethal injury; the ''non-injurious behavioral response'' threshold; and the 23 psi criterion for estimating TTS threshold.

Response: NMFS stated the Commission's concerns and addressed them in the **Federal Register** notice announcing the issuance of the 2005 and 2006 IHA's (70 FR 51341, August 30, 2005; 71 FR 60693, October 16, 2006), and they may be referenced there.

Comment 4: A member of the public opposes the issuance of this permit based on the assumption it would allow for the killing of marine mammals.

Response: NMFS does not believe that the authorized activities will result in the death of any marine mammals, nor does this IHA authorize any marine mammal injury or mortality.

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 calculated ZOI area, 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 high density estimate for each species of dolphin, the ZOI of charge employed and the total of events per year, an annual estimate for the potential number of animals exposed to noise was derived. Without any mitigation, up to one cetacean is estimated to be within the Level A Harassment 205 dB ZOI. Because in-place mitigations would clear the area of any marine mammals before detonation, it is anticipated that no marine mammal takes by mortality or injury (Level A Harassment) would result. No Level A Harassment or mortality is authorized by NMFS during NEODS activities.

For Level B Harassment, two separate criteria were established, one expressed in dB re 1 μPa² 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 4 and 3 individuals, respectively. The estimated numbers potentially taken through exposure to 23 psi are also 4 and 3 individuals, respectively. This represents less than 0.0002 percent for each species and perhaps 1–2 percent of an inshore stock of Atlantic bottlenose dolphins if one individual for that stock is harassed. While it is highly unlikely that the offshore bottlenose dolphin stock would be affected by this action due their distribution, it not possible to distinguish from inshore stocks of this species.

Possible Effects of Activities on Marine Mammal Habitat

NMFS 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 NMFS' Environmental Assessment. These documents conclude that marine mammal habitat would not be affected from the specified activity.

EAFB initiated consultation with NMFS Southeast Region (SER) on July 27, 2007 for effects regarding Essential Fish Habitat (EFH). On August 6, 2007, NMFS SER concurred with EAFB's determination that NEODS activities are not likely to adversely affect EFH. NMFS Office of Protected Resources adopts the SERs determinations and accordingly finds that EFH is not likely to be adversely affected from NEODS activities.

Mitigation and Monitoring

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the Level A harassment ZOI. A trained, NMFS-approved observer will 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 (1,509 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, one hour, and the entire 15 minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals, 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 any ZOI 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 ZOI is and will remain clear of detectable marine mammals.

Monitoring of the survey 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 Level B Harassment 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 Level B Harassment ZOI and subsequently is not seen again within 15 minutes. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge fails to explode, mitigation measures would continue while operations personnel attempt to recognize and solve the problem (i.e., 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.

Additionally, in the unlikely event that an injured (Level A Harassment), seriously injured, or dead marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the NEODS activities, training operations will be suspended and NMFS contacted immediately. This suspension would remain in place until NMFS has (1) reviewed the situation and determined that further injury or death is unlikely to occur or (2) issued regulations to authorize such takes under section 101(a)(5)(A) of the MMPA.

Reporting

The Air Force will notify NMFS two 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 conducted under this IHA.

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 NEODS 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 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). In 2007, NMFS issued a FONSI based on 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. This 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. Therefore, preparation of an EIS on this action is not required by section 102(2) of the NEPA or its implementing regulations.

Conclusions

NMFS has issued an IHA for a one-year period to the EAFB for the NEODS training missions to take place within the EGTTR, Florida. The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has 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–ft (18 m) deep water from one to three nm offshore, may result in the Level B Harassment of a few Atlantic bottlenose dolphins and Atlantic spotted dolphins; this would have a negligible impact on these affected marine mammals 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. No subsistence users are located within the geographic area of this project.

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.

Authorization

As a result of these determinations, NMFS proposes to issue an IHA to the Air Force for NEODS training operations at EAFB, Florida, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 19, 2008.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–22817 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK74

General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting, via teleconference, of the General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) in October 2008. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will be held on October 16, 2008, from 10 a.m. to 12 p.m. (or until business is concluded), Pacific time.

ADDRESSES: The meeting will be held via teleconference. Please notify Allison Routt prior to October 9, 2008, to receive dial in information and of your intent to participate in this teleconference.

FOR FURTHER INFORMATION CONTACT: Allison Routt at (562) 980–4019 or (562) 980–4030.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee to the U.S. Section to the IATTC. The U.S. Section consists of the four U.S. Commissioners to the IATTC and the representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The Advisory Committee supports the work of the U.S. Section in a solely advisory capacity with respect to U.S. participation in the work of the IATTC, with particular reference to the development of policies and negotiating positions pursued at meetings of the IATTC. NMFS, Southwest Region, administers the Advisory Committee in cooperation with the Department of State.

Meeting Topics

The General Advisory Committee will meet to receive and discuss information on: (1) 2008 IATTC activities, (2) upcoming meetings of the IATTC, including issues such as: conservation and management measures for yellowfin and bigeye tuna for 2009 and future years, measures to be taken in the absence of conservation and management measures, management of fishing capacity, and other issues, (4) IATTC cooperation with other regional fishery management organizations, (5) implementing legislation for the Antigua Convention, including the provisions for a General Advisory Committee, and (6) administrative matters pertaining to the General Advisory Committee.

Special Accommodations

The meeting is via teleconference. Requests for special accommodations, issues, and needs should be directed to Allison Routt at (562) 980–4019 or (562) 980–4030 by October 9, 2008.

Dated: September 25, 2008.

Emily H. Menashes,

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

[FR Doc. E8–22963 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XK75

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Bycatch/Limited Access Committee; its Ecosystems Committee; its Research Set-Aside Committee; its Squid, Mackerel, Butterfish Committee; its Law Enforcement Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, October 14, 2008 through Thursday, October 16, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Ramada Plaza & Resort, 1701 South Virginia Dare Trail, Kill Devil Hills, NC 27948; telephone: (252) 441–2151.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New St., Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331 ext. 19.

SUPPLEMENTARY INFORMATION:

Tuesday, October 14, 2008

9 a.m. until 11 a.m. - The Bycatch/ Limited Access Committee will meet.

11 a.m. until 12 p.m. - The Ecosystems Committee will meet.

1 p.m. until 3 p.m. - The Research Set-Aside Committee will meet.

3 p.m. until 5 p.m. - The Squid, Mackerel, and Butterfish Committee will meet.

Wednesday, October 15,2008

9 a.m. until 9:30 a.m. - The Law Enforcement Committee will meet.

9:30 a.m. - The Council will convene.

9:30 a.m. until 9:45 a.m. - Swearing in of new and reappointed members will be held.

9:45 a.m. until 10:30 a.m. - Groundfish Assessment Review Meeting (GARM) Report will be provided to the Council by NMFS Officials.

10:30 a.m. until 11 a.m. - Meeting 2 of Framework 2 to the Spiny Dogfish Fishery Management Plan (FMP) will be discussed.

11 a.m. until 12 p.m. - A presentation will be given to the Council regarding Amendments 3 and 4 to the Consolidated Highly Migratory Species (HMS) FMP by NMFS Officials.

1 p.m. until 2:30 p.m. - The Council will hold its regular Business Session.

2:30 p.m. until 3:30 p.m. - An official from NMFS will provide the Council a presentation regarding the Proposed Rule for use of Turtle Excluded Devices (TED) in all Atlantic coast trawl fisheries.

3:30 p.m. until 5 p.m. - The Executive Committee will meet.

7 p.m. until 9 p.m. - There will be a scoping meeting to address Amendment 3 to the NMFS' Consolidated Highly Migratory Species Fishery Management Plan.

Thursday, October 16, 2008

9 a.m. until 11 a.m. - The Council will convene to approve Amendment 10 to the Squid, Mackerel, and Butterfish FMP for Secretarial Submission.

11 a.m. until 12 p.m. - The Council will then consider any Continuing and New Business.

Agenda items by day for the Council's Committees and the Council itself are:

Tuesday, October 14 - The Bycatch/Limited Access Committee will continue discussion regarding prioritization and resolution of bycatch issues, i.e. - bycatch notebook and approve the final version of the Council's bycatch pamphlet for catch and release practices. The Ecosystems Committee will consider expanding the current charge and role of the Committee. The Research Set-Aside Committee will establish research set-aside priorities for 2010 and consider developing a standardized rating and ranking system for grant applications from a management and/or policy perspective. The Squid, Mackerel, and Butterfish Committee will review comments received regarding Amendment 11's recent Notice of Intent (NOI) including: implementation of Annual Catch Limits (ACL) and Accountability Measures (AM); updated Essential Fish Habitat (EFH) descriptions for all four species; and, consider possible limitations on at-sea processing of mackerel.

Wednesday, October 15 - The Law Enforcement Committee will review the Fisheries Achievement Award (FAA) nominations and develop recommendations regarding possible recipient(s) for this recognition. The Council will convene to swear in new and reappointed Council members and elect Council Officers. The Council will receive a report on the recent GARM Assessment. The Council will select and adopt the preferred alternative to adjust stock status determination criteria (biological reference points) for the Spiny Dogfish FMP. A presentation will be given by Karyl Brewster-Geisz on Amendment 3 (small coastal shark issues) and Amendment 4 (Caribbean issues) to the NMFS' Consolidated HMS FMP. The Council will then conduct its Business Session and receive Organizational, Liaison, Executive Director, Status of Fishery Management Plans and Committee reports. A presentation will also be provided by a NMFS Protected Resources official regarding NMFS' Proposed Rule for use of Turtle Excluder Devices (TED) in all Atlantic coast trawl fisheries. The Executive Committee will review the 2009 Annual Work Plan (AWP); review nominees and select recipients for the 2008 Ricks E Savage Award; and, address logistics and mechanics of using the Scientific and Statistical Committee (SSC) to provide advice to the Council.

Thursday, October 16 - The Council will convene to review and adopt modified alternative 1A to implement butterfish rebuilding through use a bycatch cap. The Council will then consider any continuing or new business.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674–2331 ext 18, at least 5 days prior to the meeting date.

Dated: September 24, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–22816 Filed 9–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to review the 2008 installation visits, review the Wounded Warrior installation visits, review and vote on recommendations for Wounded Warrior families, and also review and edit the draft of the 2008 Report. The meeting is open to the public, subject to the availability of space.

DATES: October 14–15, 2008, 8:30 a.m.–5 p.m.

ADDRESSES: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Tuesday, October 14, 2008 8:30 a.m.–5 p.m.

—Welcome & Administrative Remarks.
—Review 2008 installation visits.
—Review Wounded Warrior installation visits.
—Review and edit 2008 draft report.

Wednesday, October 15, 2008 8:30 a.m.–5 p.m.

—Welcome and Administrative Remarks.
—Review and edit 2008 draft report.

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement

to the Point of Contact listed above at the address detailed NLT 5 p.m., Friday, October 10, 2008. If a written statement is not received by Friday, October 10, 2008 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services.

If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, October 14, 2008 from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

September 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–22865 Filed 9–29–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces an Advisory Committee Meeting of the Defense Science Board. The Defense Science Board will meet in closed session on October 22–23, 2008 at the Pentagon, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that the Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point; however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: September 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–22866 Filed 9–29–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

DATES: *Effective Date:* September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060–6219, (703) 767–1039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Kenneth Saccoccia, Assistant Director, Policy and Plans, DCAA, Chairperson;

Mr. Thomas Peters, Director, Field Detachment, DCAA, member;

Ms. Karen K. Cash, Assistant Director, Operations, DCAA, member.

Regional Performance Review Board

Mr. Edward Nelson, Regional Director, Northeastern Region, chairperson;

Mr. Christopher Andrezze, Regional Director, Western Region, DCAA, member;

Mr. David Eck, Regional Director, Central Region, DCAA.

Dated: September 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–22869 Filed 9–29–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0106]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 30, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DPR 36

SYSTEM NAME:

Defense Integrated Military Human Resources System (DIMHRS) Records.

SYSTEM LOCATION:

Primary Location Corporate Data Center, Defense Enterprise Computing Center Ogden, 7879 Wardleigh Road, Hill AFB, UT 84056–5996.

Decentralized segments are located at Department of Defense (DoD) activities worldwide. Official mailing addresses can be obtained from the appropriate Service point of contact found in the ''Notification procedure'' or ''Record Access'' sections of this proposed system of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the United States Army, Navy, Air Force and Marines to include: Active Duty, National Guard, Reserve, Retired and former military personnel, and Coast Guard personnel when operating as a military service under the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Information: Individual's name, rank/grade, address, date of birth, eye color, height, weight, place of birth, Social Security Number (SSN), and similar personal identifiers for beneficiary/dependant purposes; mother's maiden name, driver's license number, security level, office location, assigned user name and security questions, local and home of record addresses, phone numbers and emergency contact information.

Personnel Information: Performance plans, evaluation and review history; enrollment, participation, status and outcome information for Personnel Programs; service qualification and performance measures; types of orders; accomplishments, skills and competencies; career preferences; contract information related to Oath of Office, enlistment and re-enlistment; retirement and separation information; retirement points including information necessary to determine retirement pay; benefits eligibility, enrollment, designations and status information; Uniform Code of Military Justice (UCMJ) Actions summarizing court martial, non-judicial punishments, and similar or related documents. Circumstances of an incident the member was involved in and whether he or she is in an injured, wounded, seriously wounded, or ill duty status from the incident.

Duty related information: Duty station, employment and job related information and history; deployment information; work title, work address and related work contact information (e.g., phone and fax numbers, E-mail address), supervisor's name and related contact information.

Education and training: High school graduation date and location; highest level of education; other education, training and school information including courses and training completion.

Pay Entitlement and Allowances: Pay information including earnings and allowances, additional pay (bonuses, special, and incentive pays); payroll computation, balances and history with associated accounting elements; leave balances and leave history.

Deductions from Pay: Tax information (federal, state and local) based on withholding options, payroll deductions, garnishments; savings bond information including designated owner, deductions, and purchase dates; thrift savings plan participation.

Other pay-related information: Direct deposit information including financial institution name, routing number and account information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113 note, Secretary of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 14 U.S.C. 5 and 92, Coast Guard; 37 U.S.C., Pay and Allowances of the Uniformed Services; and E.O. 9397 (SSN).

PURPOSE(S):

Provide a fully integrated military personnel and pay capability for all Components of the Military Services of the Department of Defense. Additionally, DIMHRS will provide the Military Services and their components the capability to effectively manage their members during peacetime, war, and through mobilization and demobilization. In addition, it will be used as a management tool for decisions made within the Department of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification, and assistance in obtaining benefits for which members, former members or retiree may be eligible.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties related to approved research projects, and for processing and adjudicating claims, determining eligibility, notification, and assistance in obtaining benefits and medical care for which members, former members, retiree and family members/annuitants may be eligible.

To the Department of Veterans Affairs to provide information regarding a service-member's record or family member for the purposes of supporting eligibility processing for the Service-member's Group Life Insurance program.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Military Service. Access will be limited to those portions of the member's record required to effectively assist the member.

To the U.S. Citizenship and Immigration Services for use in making alien admission and naturalization inquiries.

To the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty military service of Members of Congress. Access is limited to those portions of the member's record required to verify time in service.

To the widow or widower, dependent, or next-of-kin of deceased members to settle the affairs of the deceased member. The categories of individuals listed will have to verify relationship by providing a birth certificate, marriage license, death certificate, or court document as requested/required to prove they are who they say they are.

To governmental agencies for the conduct of computer matching agreements for the purpose(s) of determining eligibility for federal benefit programs, to determine compliance with benefit program requirements and to recover improper payments or delinquent debts under a federal benefit program.

To officials of the U.S. Coast Guard (USCG) for the purpose of creating service records for current USCG members that had prior Military Service.

To federal and state licensing authorities and civilian certification boards, committees and/or ecclesiastical endorsing organizations for the purposes of professional credentialing (licensing and certification) of lawyers, chaplains and health professionals.

To Federal agencies such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

To the officials and employees of the Department of Labor in the performance of their official duties related to employment and compensation.

The ''Blanket Routine Uses'' set forth at the beginning of DoD's compilation of System of Records Notices apply to this system.

Note: Disclosure to consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN), and date of birth.

SAFEGUARDS:

DIMHRS automated data is maintained in controlled government facilities. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel with a need-to-know. Access to personal data is limited to person(s) responsible for maintaining and servicing DIMHRS data in performance of their official duties and who are properly trained, screened and cleared for a need-to-know. Access to personal data is further restricted by the use of Common Access Card (CAC) and/or strong password, which are changed periodically according to DoD security policy.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of the Under Secretary of Defense, Personnel and Readiness, Information Management, 4040 Fairfax Drive, Arlington, VA 22203–1613.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate address below.

Navy Records—Navy Personnel Command, Records Management and Policy, PERS 312E, 5720 Integrity Drive, Millington, TN 38055–3120.

Marine Corps Records—Commandant of the Marine Corps, Code MMSB–12, 2008 Elliott Road, Quantico, VA 22134–5030.

Army Records—U.S. Army Human Resources Command, Attn: AHRC–PAV–V, 1 Reserve Way, St. Louis, MO 63132–5200.

Air Force Records—Air Force Personnel Center, HQ AFPC/DPSSRP, 550 C Street West, Suite 19, Randolph AFB, TX 78150–4721.

Coast Guard Records—Commander, CGPC–adm–3, USCG Personnel Command, 4200 Wilson Blvd., Suite 1100, Arlington, VA 22203–1804.

Requests should contain individual's legal name, Social Security Number (SSN), and date of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking written access to information about themselves contained in this system of records should address written inquiries to the appropriate address below.

Navy Records—Navy Personnel Command, Records Management and Policy, PERS 312E, 5720 Integrity Drive, Millington, TN 38055–3120.

Marine Corps Records—Commandant of the Marine Corps, Code MMSB–12, 2008 Elliott Road, Quantico, VA 22134–5030.

Army Records—U.S. Army Human Resources Command, Attn: AHRC–PAV–V, 1 Reserve Way, St. Louis, MO 63132–5200.

Air Force Records—Air Force Personnel Center, HQ AFPC/DPSSRP, 550 C Street West, Suite 19, Randolph AFB, TX 78150–4721.

Coast Guard Records—Commander, CGPC–adm–3, USCG Personnel

Command, 4200 Wilson Blvd., Suite 1100, Arlington, VA 22203–1804.

Requests should contain individual's legal name, Social Security Number (SSN), and date of birth.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing information about themselves and for contesting contents and appealing initial agency determinations are published in Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Office, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

RECORD SOURCE CATEGORIES:

Data contained in this system is collected from the individual and DoD Military Services Human Resource Offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–22841 Filed 9–29–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Department of Defense Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the Department of Defense Office of Inspector General (DoD OIG), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

DATES: *Effective Date:* September 23, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Hughes, Director, Human Capital Advisory Services, Administration and Management, DoD OIG, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DoD OIG, PRB:

Karen Ellis, Assistant Inspector General for Investigations, Department of Agriculture.

Marla Freedman, Assistant Inspector General for Audit, Department of Treasury.

William Maharay, Deputy Inspector General for Audit Services, Department of Energy.

Lisa Martin, General Counsel, United States Postal Service, Office of Inspector General.

Andrew Patchan, Assistant Inspector General for Audits and Attestations, Federal Reserve Board.

Peter Usowski, Assistant Inspector General for Investigations, Central Intelligence Agency.

Dated: September 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–22867 Filed 9–29–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Friday, October 24, 2008.

3. *Time:* 9 a.m.–1 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Superintendent's Conference Room, Taylor Hall, West Point, NY.

5. *Purpose of the Meeting:* This is the 2008 Fall/Annual Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: The Academic Program, Athletic Program, and the Residential Communities Initiative.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Cynthia Kramer, (845) 938–5078, *Cynthia.kramer@us.army.mil*.

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Kramer, (845) 938–5078 (fax: 845–938–3214) or via *e-mail: Cynthia.kramer@us.army.mil*.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–22917 Filed 9–29–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**. This meeting is being held in place of the September 18, 2008, meeting, which was cancelled.

DATES: Thursday, October 16, 2008, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental

restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Presentation.
- Retreat Review—Work Plan Approval.
- EM SSAB Chairs Meeting Review.
- Public Comments.
- Administrative Issues—Motions;
  - Chair-Elect Election,
  - Recommendations.
- Final Comments.
- Adjourn.

Breaks Taken as Appropriate

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/minutes.htm*.

Issued at Washington, DC on September 24, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–22922 Filed 9–29–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 23, 2008, 10 a.m. to 12 p.m.

Location: TMS, Inc., 955 L'Enfant Plaza North, SW., Suite 1500, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater natural gas and other petroleum resources to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999.

Tentative Agenda

9:30 a.m.–10 a.m. Registration.
10 a.m.–11:45 a.m. Welcome and Roll Call;
Opening Remarks by the Committee Chair;
Report by the Editing Subcommittee;
Facilitated discussion by the members regarding final report;
Approval of Committee final report; and
Preparations for the next meeting of the Committee.
11:45 a.m.–12 p.m. Public Comments.
12 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting, for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on September 24, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–22920 Filed 9–29–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 23, 2008, 1 p.m. to 3 p.m.

LOCATION: TMS, Inc., 955 L'Enfant Plaza, North, SW., Suite 1500, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999.

Tentative Agenda:

12:30 p.m.–1 p.m. Registration.
1 p.m.–2:45 p.m. Welcome and Roll Call; Opening Remarks by the Committee Chair; Report by the Editing Subcommittee; Facilitated discussion by the members regarding final report; Approval of Committee final report; and Preparations for the next meeting of the Committee.
2:45 p.m.–3 p.m. Public Comments.
3 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement

with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on September 24, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–22919 Filed 9–29–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–474–000]

Texas Gas Transmission, LLC; Notice of Request Under Blanket Authorization

September 22, 2008.

Take notice that on September 18, 2008, Texas Gas Transmission, LLC (Texas Gas), 417 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP08–474–000, a prior notice request pursuant to sections 157.205 and 157.211 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and its blanket authority granted in Docket No. CP82–407–000 for authorization to construct, install, operate, and maintain a new delivery point to be located in Warren County, Ohio for Knox Energy Cooperative Association, Inc. (KECA), all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

KECA has requested that Texas Gas provide the proposed delivery meter station in order for KECA to provide natural gas service to the Warren County Correctional Facility which is currently being served by Duke Energy Ohio, Inc., a local distribution company. Texas Gas estimates that it would cost $561,414 to construct the proposed delivery meter station with KECA and all costs associated with such facilities would be reimbursed by KECA.

Any questions regarding the application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky 42301, or call (270) 688–6825, or fax (270) 688–5871, or e-mail *kathy.fort@bwpmlp.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22857 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 23, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER97–851–019.

Applicants: Hydro-Quebec Energy Services (U.S.) Inc.

Description: H.Q. Energy Services (U.S.) Inc.'s Notice of Non-Material Change in Status.

Filed Date: 09/19/2008.

Accession Number: 20080919–5121.

Comment Date: 5 p.m. Eastern Time on Friday, October 10, 2008.

Docket Number: ER02–1884–006.

Applicants: Waterside Power, LLC.

Description: Waterside Power, LLC affirms that none of Waterside or any of its affiliates has erected or will erect barriers to entry into the relevant market.

Filed Date: 09/17/2008.

Accession Number: 20080922–0255.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER02–1398–005; ER98–564–011; ER07–1274–002; ER05–111–005; ER08–25–004; ER08–26–004; ER08–685–003.

Applicants: KeySpan-Ravenswood, LLC; TransCanada Power Marketing Ltd; TransCanada Energy Marketing ULC; TransCanada Hydro Northeast Inc.; Ocean State Power; Ocean State Power II; TransCanada Maine Wind Development Inc.

Description: Key-Span Ravenswood, LLC et al. submits notification of a non-material change in status with respect to the market based rate authority.

Filed Date: 09/22/2008.

Accession Number: 20080923–0061.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: ER08–799–002.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits their Master Service Agreement.

Filed Date: 09/22/2008.

Accession Number: 20080923–0062.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: ER08–416–004; ER06–1552–006.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its current Open Access Transmission and Markets Tariff and its Open Access Transmission Energy and Operating Reserve Markets Tariff.

Filed Date: 09/17/2008.

Accession Number: 20080919–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–921–001.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits revisions to

Appendices B and E of the Interconnection Agreement between PG&E and the Sacramento Municipal Utility District designated as PG&E Second Revised Rate Schedule FERC 136.

Filed Date: 09/18/2008.

Accession Number: 20080919–0007.

Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Docket Numbers: ER08–1201–001.

Applicants: Southwestern Electric Power Company.

Description: American Electric Power Service Corporation on behalf of Southwestern Electric Power Company submits a Refund Report

Filed Date: 09/18/2008.

Accession Number: 20080918–5084.

Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Docket Numbers: ER07–1402–002.

Applicants: Allegheny Generating Company.

Description: Supplemental Information/Amended and Restated Settlement Agreement of Allegheny Generating Company.

Filed Date: 08/01/2008.

Accession Number: 20080801–5069.

Comment Date: 5 p.m. Eastern Time on Friday, October 3, 2008.

Docket Numbers: ER08–1149–002.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits Alternate Pro Forma Sheet 30 to Westar's pro forma Formula Rate Agreement for Full Requirements Electric Service between Westar and the City of Elwood, Kansas etc.

Filed Date: 09/19/2008.

Accession Number: 20080922–0030.

Comment Date: 5 p.m. Eastern Time on Friday, October 10, 2008.

Docket Numbers: ER08–1416–000.

Applicants: Black Hills/Colorado Electric Utility Co.

Description: Black Hills/Colorado Electric Utility Co, LP submits Notice of Succession notifying that they have succeeded to the open access transmission tariff of Aquila, Inc.

Filed Date: 08/13/2008.

Accession Number: 20080819–0279.

Comment Date: 5 p.m. Eastern Time on Friday, October 3, 2008.

Docket Numbers: ER08–1454–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc *et. al* submits Substitute Original Sheet Nos 1–12 correcting the volume identification.

Filed Date: 09/16/2008.

Accession Number: 20080917–0244.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Docket Numbers: ER08–1513–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits the Errata to the Informational Filing for Qualification in the Forward Capacity Market filed by ISO New England Inc on 9/9/08.

Filed Date: 09/16/2008.

Accession Number: 20080917–0245.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Docket Numbers: ER08–1542–000.

Applicants: U.S. Gas and Electric Inc.

Description: U.S. Gas & Electric Inc request acceptance of FERC Electric Tariff, Original Volume 1, which it will engage in wholesale sales of electric energy etc.

Filed Date: 09/17/2008.

Accession Number: 20080919–0066.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1547–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Network Integration Transmission Service Agreement dated 8/19/08 with Basin Electric Power Cooperative designated as Service Agreement 505, Seventh Revised Volume 11 OATT et al.

Filed Date: 09/17/2008.

Accession Number: 20080917–0241.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1548–000.

Applicants: Northeast Utilities Service Company, National Grid USA.

Description: Joint Application for Transmission Incentives of Northeast Utilities Service Company and National Grid USA.

Filed Date: 09/17/2008.

Accession Number: 20080919–0080.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1550–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits proposed changes to its Revised and Restated Interconnection Agreement with North Carolina Electric Membership Corporation, which is being designated as Duke Energy Fourth Revised etc.

Filed Date: 09/17/2008.

Accession Number: 20080919–0013.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1551–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits proposed changes to its Revised and Restated Interconnection Agreement with North Carolina Electric Membership Corporation, which is being designated as Duke Energy Fourth Revised etc.

Filed Date: 09/17/2008.

Accession Number: 20080919–0013.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1552–000.

Applicants: Sierra Pacific Resources Operating Company.

Description: Nevada Power Company and Sierra Pacific Power Company submits revisions to its FERC Electric Tariff, Third Revised Volume 1 Open Access Transmission Tariff.

Filed Date: 09/17/2008.

Accession Number: 20080919–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1553–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement among PJM, RPL Holdings, Inc and Public Service Electric and Gas Company and a notice of cancellation of an ISA being superseded.

Filed Date: 09/17/2008.

Accession Number: 20080919–0006.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: ER08–1554–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Services Corporation submits a fully executed generation interconnection agreement dated 8/29/08 with Texas Central Company Transmission Service Provider & EC&R Papalote Creek I, LLC.

Filed Date: 09/18/2008.

Accession Number: 20080922–0029.

Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Docket Numbers: ER08–1555–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement among PJM, Big Sky Wind, LLC and Commonwealth Edison Company.

Filed Date: 09/18/2008.

Accession Number: 20080922–0028.

Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Docket Numbers: ER08–1556–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to Schedules 7, 8, and 9 of their Open Access Transmission and Energy Markets Tariff, to be effective 11/18/08.

Filed Date: 09/19/2008.

Accession Number: 20080923–0004.

Comment Date: 5 p.m. Eastern Time on Friday, October 10, 2008.

Docket Numbers: ER08–1557–000.
Applicants: Freedom Partners, LLC.
Description: Freedom Partners, LLC submits a Notice of Cancellation of FERC Electric Tariff, Original Volume 1, to be effective 11/1/08.
Filed Date: 09/19/2008.
Accession Number: 20080923–0003.
Comment Date: 5 p.m. Eastern Time on Friday, October 10, 2008.

Docket Numbers: ER08–1558–000.
Applicants: Constellation Energy Commodities Group.
Description: Constellation Energy Commodities Group, Inc requests a short-term waiver of the Commission's affiliate sales restrictions, effective 9/19/08.
Filed Date: 09/19/2008.
Accession Number: 20080923–0002.
Comment Date: 5 p.m. Eastern Time on Friday, October 10, 2008.

Docket Numbers: ER08–1559–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Coop, Inc submits First Revised Sheet 400–403 and 405–499 to First Revised Rate Schedule 23–33.
Filed Date: 09/19/2008.
Accession Number: 20080923–0006.
Comment Date: 5 p.m. Eastern Time on Friday, October 10, 2008.

Docket Numbers: ER08–1562–000.
Applicants: TC Ravenswood, LLC.
Description: TC Ravenswood, LLC submits Notice of Succession notifying FERC of a corporate name change, and to adopt, as their own, FERC Electric Tariff of KeySpan-Ravenswood, LLC.
Filed Date: 09/22/2008.
Accession Number: 20080923–0063.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–65–000.
Applicants: Michigan Electric Transmission Co., LLC.
Description: Application of Michigan Electric Transmission Company, LLC under Section 204 of the Federal Power Act.
Filed Date: 09/18/2008.
Accession Number: 20080918–5053.
Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Docket Numbers: ES08–66–000.
Applicants: ITC Midwest LLC.
Description: Application of ITC Midwest LLC under Section 204 of the Federal Power Act.
Filed Date: 09/18/2008.
Accession Number: 20080918–5068.
Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–104–002.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company Compliance Filing With Revisions To Attachment C.
Filed Date: 09/19/2008.
Accession Number: 20080919–5099.
Comment Date: 5 p.m. Eastern Time on Friday, October 10, 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. E8–22864 Filed 9–29–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–462–000]

Algonquin Gas Transmission, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Kleen Energy Lateral Project and Request for Comments on Environmental Issues

September 23, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the Kleen Energy Lateral Project involving the construction of approximately 1.13 miles of 20-inch-diameter natural gas transmission pipeline by Algonquin Gas Transmission, L.L.C. (AGT) in Middletown, Connecticut. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on October 23, 2008. Details on how to submit comments are provided in the ''Public Participation'' section of this notice.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. AGT would seek to negotiate a mutually acceptable

agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, AGT could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

AGT proposes to construct its 1.13-mile-long, 20-inch-diameter Kleen Energy Lateral in the area of Middlesex County, Connecticut. AGT would also construct one metering station and related ancillary facilities. The project would provide up to 131,000 dekatherms per day of firm natural gas transportation service to the Kleen Energy Power Plant, a proposed 620-megawatt natural gas-fired power plant to be constructed by Kleen Energy in the City of Middletown, Connecticut. The lateral pipeline would begin at an interconnect with AGT's existing W-System pipeline at the NRG Power Plant Facility and terminate at the proposed meter station in the vicinity of the proposed power plant.

Construction and operation of the proposed project would affect about 18.6 acres, including the pipeline (4.3 acres), meter station (0.9 acre), temporary workspaces (11.6 acres), and access roads (1.8 acres). The proposed project is primarily located within an existing paved roadway. The meter station would be located immediately adjacent to the proposed Kleen Energy Power Plant. AGT would require one new access road to access the proposed meter station. Another existing road (located at the Middletown Power Plant) would be used for site access during construction and operation.

The general location of the proposed facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to AGT.

The EA Process

We [2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes AGT's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use and visual quality
- Cultural resources
- Vegetation and wildlife (including threatened and endangered species)
- Air quality and noise
- Reliability and safety

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, local libraries and newspapers, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are received and considered, please carefully follow the instructions in the ''Public Participation'' section below.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Kleen Energy Lateral Project. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives, and measures to avoid or lessen the environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before October 23, 2008.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *eFiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project.

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister''. You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing.''

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ11.1.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.''

Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

As described above, we may publish and distribute the EA for comment. If you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Form (appendix 3). If you do not return the Environmental Mailing List Form, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any public meetings or site visits scheduled for this project will be posted on the Commission's calendar at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. You can also request additional information by calling AGT at (713) 627–5053.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22868 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA08–62–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

September 23, 2008.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on September 25, 2008, members of its staff will participate in a meeting to be conducted by the California Independent System Operator (CAISO) regarding the CAISO's transmission planning standards agreement. The information and documents for the meeting can be obtained from Judi Sanders, *jsanders@caiso.com*.

Sponsored by the CAISO, this meeting is open to all market participants, and staff's participation is part of the Commission's ongoing outreach efforts. This meeting may discuss matters at issue in the above captioned docket.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0233 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22860 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1558–000]

Constellation Energy Commodities Group, Inc.; Notice of Filing

September 23, 2008.

Take notice that on September 19, 2008, Constellation Energy Commodities Group, Inc. (Constellation) filed a request for short-term waiver of the Commission's affiliate sales restrictions, effective September 19, 2008, with respect to ongoing power sales by Constellation to PacifiCorp under its market-based rate tariff, until a more detailed proposal for future sales is filed and accepted by the Commission, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (2006) and Part 35 of the Rules and Procedures of the Commission, 18 CFR Part 35 (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 on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 26, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22861 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC08–119–000]

Rumford Power Inc.; Tiverton Power Inc.; Notice of Filing

September 22, 2008.

Take notice that on September 17, 2008, Rumford Power Inc. and Tiverton Power Inc. filed a revised Exhibit M to the August 20, 2008 filed section 203 application.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 2, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22855 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1542–000]

U.S. Gas and Electric Inc; Notice of Filing

September 22, 2008.

Take notice that on September 17, 2008, U.S. Gas and Electric Inc filed an application for order accepting its FERC Electric Tariff, Original Volume No. 1, under which it will engage in wholesale sales of electric energy, capacity, and ancillary services at market-based rates, grant certain blanket approvals and expedited action, and waivers of certain Commission regulations.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 8, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22854 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–5041–000]

Western Area Power Administration; Notice of Filing

September 22, 2008.

Take notice that on September 16, 2008, the Deputy Secretary of the Department of Energy submitted Rate Order No. WAPA–138, confirmed and approved on an interim basis, effective October 1, 2008, Rate Schedules PD–F7 for firm power from the Parker-Davis Project, PD–FT7 for firm point-to-point transmission on the same system, PD–FCT7 for firm point-to-point transmission of Salt Lake City Area Integrated Projects power on the P–DP, and PD–NFT7 for non-firm transmission service on the same system, and submitted for confirmation and approval on a final basis, under the authority vested in the Commission by Delegation Order No. 00–037.00, Rate Schedules PD–F7, PD–FT7. PD–FCT7, and PD–NFT7, effective October 1, 2008 and ending September 30, 2013.

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 on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 16, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22856 Filed 9–29–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0696; FRL–8722–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for the Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; EPA ICR No.1292.08, OMB Control No. 2060–0135

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 1, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2008–0696 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov.*
- *Fax:* 202–566–9744
- *Mail:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center Public Reading Room, EPA West Building Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2008–0696. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Ross Ruske, Air Enforcement Division, (2242A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1033; fax number: (202) 564–0069; e-mail address: *ruske.ross@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2008–0696 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are the manufacturers of new aftermarket motor vehicle catalytic converters and reconditioners of used motor vehicle catalytic converters. The SIC code is 346. The other respondents are automobile exhaust repair facilities.

Their SIC code is 7533.

Title: Reporting and Recordkeeping Requirements for the Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters

ICR numbers: EPA ICR No. 1292.08, OMB Control No. 2060–0135.

ICR status: This ICR is currently scheduled to expire on December 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 203(a)(3) of the Clean Air Act (Act) prohibits removing or rendering inoperative automobile emission control devices or elements of design. But for the adoption of the aftermarket catalytic converter enforcement policy (51 FR 28114–28119, 28133 (Aug. 5, 1986); 52 FR 42144 (Nov. 3, 1987)), the manufacture, sale or installation of aftermarket catalytic converters (catalysts) not equivalent to new original equipment (OE) catalysts would constitute a violation of the Act. However, because replacement OE catalysts are expensive, many consumers had elected to not replace catalysts that malfunctioned subsequent to the expiration of the emissions warranty on their vehicles. The Agency believes that allowing the installation of aftermarket catalysts on older vehicles can be environmentally beneficial if the Agency can be assured that the aftermarket catalysts meet certain standards and if installers are accountable to select the proper aftermarket catalyst for each vehicle application. Manufacturers of new aftermarket catalysts are required, on a one-time basis, for each catalyst line manufactured, to identify the catalyst physical specifications and summarize pre-production testing of the prototype.

The original policy required that, once production had begun, the manufacturer would submit to EPA on a semi-annual basis the number of each type of aftermarket catalyst manufactured and a summary of information contained on warranty cards or, at the option of the respondent, copies of warranty cards for all converters sold. This reporting regarding sales and warranty information was eliminated in March 1999, with the stipulation that records must be maintained and the information submitted to EPA upon request.

On a one-time basis, companies that recondition used catalysts (catalyst reconditioners) must report the identity of the company and a description of the test bench used for testing used catalytic converters and the intended vehicle application(s) for each converter type. All used converters must be tested individually to ensure they are still functional. Additionally, the original policy required catalyst reconditioners to report on a semi-annual basis the names and addresses of distributors along with the number of each type of converter sold to each distributor. This reporting requirement was eliminated in March 1999, with the stipulation that records must be maintained and the information submitted to EPA upon request.

Companies that install aftermarket catalysts have no reporting requirements, but for 6 months must keep copies of installation invoices and records that show the reason an aftermarket catalyst installation was appropriate. Removed catalysts must be tagged with identifying information and be kept for 15 days.

EPA allows the use of pre-printed documents or computer-generated documents. All the recordkeeping under the policy is authorized by section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542. Parties who comply with these policies are allowed to install aftermarket catalysts instead of OE catalysts. Confidentiality provisions are found at 40 CFR part 2. These requirements have been in effect for over 10 years. Startup costs have been completed. The proposed ICR utilizes assumptions that are the same as the previous ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 30,014.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 212,101 hours.

Estimated total annual costs: $676,000. This includes an estimated burden cost of $390,000 and an estimated cost of $286,000 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is anticipated to be no change in the hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 24, 2008.

Granta Y. Nakayama,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. E8–22943 Filed 9–29–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1008; FRL–8385–3]

Pesticides; Notice of Intent To Withdraw the Draft PR Notice on Label Statements Regarding Third-Party Endorsements and Cause Marketing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is withdrawing its draft Pesticide Registration Notice (PR Notice) entitled ''Label Statements Regarding Third-Party Endorsements & Cause Marketing.'' The draft PR Notice, issued for public comment in October 2007, contained a description of the Agency's proposed framework for evaluating proposed statements and graphic material to appear on pesticide labeling regarding third-party endorsements or a relationship between the pesticide registrant and a charity (''cause marketing claims'') and the kinds of information EPA would expect to receive in applications to add such claims to pesticide labeling. Public comments on the draft raised serious issues, leading the Agency to conclude that considerably more information would likely be needed to support such claims than was described by the draft PR Notice. Rather than develop additional guidance, EPA believes it is better to allocate its resources to other initiatives which should improve pesticide labeling in ways that enhance users' understanding of and ability to use products safely and effectively. Thus, the Agency will continue to evaluate applications proposing to add labeling containing third-party endorsements or cause marketing claims on a case-by-case basis to ensure that the applicant has provided sufficient information to allow EPA to determine whether products containing such claims meet the standards for registration.

FOR FURTHER INFORMATION CONTACT: Michelle DeVaux, Immediate Office (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–5891; fax number: (703) 308–4776; e-mail address: *devaux.michelle@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general, although it may be of particular interest to those persons who register products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1008. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

EPA is committed to ensuring that pesticide labeling communicates to the user information on how to use the product safely and effectively. The Agency is devoting considerable resources to improving the content and design of the labeling of currently approved pesticide products in order to meet this goal. These efforts address not only guidance about what information should appear in labeling, but also how EPA receives and reviews labeling and how labeling is communicated to users.

In the **Federal Register** of October 31, 2007 (72 FR 61638) (FRL–8152–6), EPA issued for public comment a draft Pesticide Registration Notice (PR Notice) entitled ''Label Statements Regarding Third-Party Endorsements & Cause Marketing.'' The draft PR Notice described a proposed framework for evaluating proposed statements and graphic material to appear on pesticide labeling regarding third-party endorsements or a relationship between the pesticide registrant and a charity (''cause marketing claims''). The draft PR Notice also discussed the kinds of information EPA would expect to receive in an application in order to determine that such claims are consistent with FIFRA. The Agency received 108 comments opposing the draft PR Notice, along with 11 comments in support of some or all of the draft.

This Notice discusses EPA's decision, after reviewing public comments, to withdraw its draft PR Notice, and to continue to support initiatives that simplify and clarify labeling in order to better communicate critical information to users. Unit III. of this Notice describes the legal framework used by EPA to evaluate proposed labeling of pesticide products. Unit IV. discusses the importance of pesticide labeling and initiatives the Agency is taking to improve pesticide labeling. Unit V. discusses the draft PR Notice and public comments received, and Unit VI. explains EPA's position on the kinds of cause marketing claims and third-party endorsements as described in the PR Notice and the basis for this position.

In sum, consistent with its mandate, EPA will accept and review all applications for new or amended pesticide labeling, including those proposing to add third-party endorsements or cause marketing claims. After review of public comments, however, the Agency has decided that such claims are unlikely to

enhance users' ability to use a pesticide safely and effectively. Because it does not wish to encourage such claims, EPA has decided it is not appropriate to issue guidance on what information is needed to support such applications. If EPA receives such an application, the Agency expects to decide on a case-by-case basis both what information would be sufficient to support the application and whether a product containing such a claim would meet the applicable statutory standard for approval.

III. Legal Framework

EPA regulates the sale, distribution, and use of pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). With certain minor exceptions, every pesticide product must be ''registered'' by EPA before it may lawfully be sold or distributed in the United States. FIFRA sections 3(a) and 12(a)(1)(A). FIFRA section 3(c)(1) requires an applicant for registration to file with EPA, among other things, ''a statement which includes— . . . (C) a complete copy of the labeling, a statement of all claims to be made for [the pesticide] . . . .'' Under FIFRA section 3(c)(5), EPA may register a pesticide, i.e., approve a license authorizing the sale and distribution of the pesticide product, if EPA determines that:

(A) [the pesticide's] composition is such as to warrant the proposed claims made for it;

(B) its labeling and other material required to be submitted comply with the requirements of [FIFRA];

(C) it will perform its intended function without unreasonable adverse effects on the environment; and

(D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

The labeling of a pesticide plays a critical role in assuring the safe use of pesticide products. FIFRA section 2(p)(1) defines the ''label'' of a pesticide as ''the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.'' FIFRA section 2(p)(2) defines ''labeling'' to mean ''all labels and all other written, printed or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label . . . .'' Typically, the label of a pesticide contains the product name, brand, or trademark; an ingredients statement; a statement of net weight or contents; directions for use; and hazard and precautionary statements. See EPA regulations at 40 CFR part 156.

Two other sections of FIFRA relating to the labeling of pesticide products contain important provisions that establish the link between registration decisions and pesticide use. Under FIFRA section 12(a)(2)(G), it is unlawful for any person ''to use any registered pesticide in a manner inconsistent with its labeling.'' To reinforce this authority, FIFRA section 12(a)(2)(A) also declares it unlawful for any person to ''detach, alter, deface or destroy, in whole or in part, any labeling required under [FIFRA],'' i.e., the labeling approved as part of EPA's registration decision. Thus, EPA's registration decisions regarding approved labeling become the primary vehicle by which EPA establishes enforceable requirements on the use of a pesticide.

In addition, FIFRA section 12(a)(1)(E) prohibits the sale or distribution of any pesticide or device which is ''misbranded.'' FIFRA section 2(q) contains a lengthy definition explaining when a pesticide should be considered ''misbranded,'' including when:

(1)(A) its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; . . .

(E) any word, statement, or other information required by or under the authority of [FIFRA] to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, . . . are adequate to protect health and the environment.

The language in FIFRA section 3(c)(5)(B), in effect, makes the misbranding definition one of the criteria for determining the acceptability of a pesticide for registration.

In summary, EPA has the authority and responsibility to register pesticides according to specific standards, to ensure that the products registered, when used according to the labeling, will not generally cause unreasonable adverse effects. The importance of labeling to convey the end results of the registration process to the user is paramount.

IV. Registration & Labeling

In order to protect human health and the environment from unreasonable adverse effects that might be caused by pesticides, the Agency has developed and operates a rigorous and demanding process for registering pesticides. The formal process begins when a manufacturer submits an application to register a pesticide. The application must contain required test data, including information on the pesticide's chemistry, environmental fate, toxicity to humans and wildlife, and its potential for human exposure. The Agency also requires a copy of the proposed labeling, including directions for use, and appropriate warnings. Since users are required to comply with the directions for use and restrictions on a product's labeling, EPA uses the labeling to define how the pesticide would be used and thus how people and the environment would be exposed to the pesticide.

As required by FIFRA section 3(c)(4), the Agency announces the receipt of applications for products that contain a new active ingredient or change a use pattern and invites public comment through a **Federal Register** Notice. Once an application is received, EPA processes it and conducts an evaluation, which includes a detailed review of scientific data to determine the potential impact on human health and the environment. The assessment may undergo peer review by a panel of scientific experts. The Agency considers the risk assessments and results of any peer review, reviews risk mitigation measures, and makes risk management and regulatory decisions.

In the decision-making process, EPA evaluates the application to determine whether the proposed use(s) meets the Agency's standards for human health, worker and environmental protection. If the application does not contain enough evidence to prove that the pesticide meets all of these standards, EPA communicates to the applicant the need for more or better refined data, labeling modifications, or additional use restrictions. Once the applicant has demonstrated that a proposed product meets the statutory standards, EPA establishes a tolerance if the product is intended to be used on food and approves the registration with any risk mitigation necessary, and publishes the decision in the **Federal Register** Notice. EPA devotes significant resources to the regulation of pesticides to ensure the highest levels of protection of the public and the environment.

Product labeling is the primary mechanism used by EPA to communicate critical information to the pesticide user. The labeling contains use directions, health and safety information, and instructions for proper storage and disposal. Users are obligated to follow the use instructions on the label and labeling for registered products. Different program

stakeholders, including states, the Pesticide Program Dialogue Committee, members of the Consumer Labeling Initiative, and the public, however, have raised concerns with the current state of pesticide labels. External stakeholder feedback has suggested that labels need to be simpler, especially for products at the consumer level, in order for users to fully understand them. To better communicate the required information and to avoid distractions to the consumer, stakeholders have suggested that EPA reduce unnecessary label content and provide clear, concise and easy-to-read information.

In addition to stakeholder feedback on label formatting, EPA has received input from states on the enforceability of label language. States, as co-regulators with EPA, are responsible for enforcing many pesticide-related laws. There are several standing venues through which states can raise concerns to EPA; while many types of issues are covered in these formal venues, states often raise questions on label language on a case-by-case basis as well. When developing enforcement cases, states often request interpretations of unclear or vague labeling language. As a consequence of these comments, EPA is becoming increasingly concerned about the effectiveness of labeling on currently registered pesticides. EPA recognizes the critical role that states play in enforcing pesticide label language and is pursuing efforts to reduce the burden on states to continuously seek interpretations of vague language.

EPA agrees with stakeholders that product labeling is a crucial communications tool between EPA and the user. In recognition of the issues raised, the Agency has supported a number of efforts to improve labeling. These include issuing guidance on environmental hazard general labeling statements on outdoor use products (73 FR 29503, May 21, 2008) (FRL–8362–3), labeling statements on products used for adult mosquito control (70 FR 12881, March 16, 2005) (FRL–7695–8), labeling of pesticide products under the National Organic Program (68 FR 10477, March 5, 2003) (FRL–7281–6), and proposed guidance on the use of antimicrobial pesticide products in heating, ventilation, air conditioning and refrigeration systems (71 FR 78433, December 29, 2006) (FRL–8108–9). Given the importance of labeling in communicating critical safety and use information to the user, EPA will continue to pursue improvements. Through internal reviews, EPA identified label organization as an issue to be addressed. The Agency is working towards using resources efficiently to effect wholesale improvements in labeling language, content, and enforceability. The goal of these initiatives is to simplify labels, reducing the amount of unnecessary information, and to clarify labeling text, in order to better communicate critical information to the user.

V. Consideration of Cause Marketing and Third-Party Claims

A. Clorox's Proposed Claims

In January 2006, The Clorox Company (Clorox) submitted an application to EPA to add cause marketing language to the labels of some of their registered pesticide products. The proposed language described a philanthropic relationship between Clorox and the American Red Cross (Red Cross). In a meeting between EPA and Clorox in March 2006, Clorox described the partnership agreement into which they had entered with the Red Cross, discussed what cause marketing language they were currently using on non-pesticide products, and presented a label mock-up for an antimicrobial bleach product. In this meeting, EPA expressed concern that consumers might interpret the Red Cross symbol on the label as an implied safety claim. Clorox provided an additional presentation in July 2006, which included a toxicological profile of bleach; a National Capital Area Poison Control Center presentation regarding incidents involving bleach; and information from a consumer survey indicating that the labeling would not alter consumer behavior in ways that could lead to misuse.

After review of the information described above, EPA approved Red Cross cause marketing claim language on the label of certain Clorox products. The decision particularly relied on EPA's expectation, which was based on the consumer survey research, that consumers would not interpret the Red Cross symbol on labels to mean that the product was safe. The decision also relied on an assessment of the likely health consequences were the products to be misused as a result of the presence of the cause marketing labeling and consideration of whether such labeling would alter consumer behavior in ways that could lead to misuse. EPA concluded that this information was sufficient to support a conclusion that the product bearing the cause marketing language would not be ''misbranded'' under FIFRA.

B. Post-Approval Activity

After EPA's decision to approve Clorox's application to add the cause marketing claim became widely known, a number of organizations expressed their opposition to the specific decision and to any general policy that would allow cause marketing claims on the labeling of pesticide products. The groups opposing the Red Cross claim on Clorox labels included the Association of American Pesticide Control Officials, Beyond Pesticides, Pesticide Action Network North America, Center for Environmental Health, American Bird Conservancy, Pesticide Education Project, Strategic Counsel on Corporate Responsibility, Environmental Health Fund, the Endocrine Disruption Exchange, and Northwest Coalition for Alternatives to Pesticides, as well as Attorneys General in six states. In April 2007, the Minnesota Department of Agriculture refused to accept Clorox products with the Red Cross charity labels for distribution in Minnesota.

This topic was discussed by the Pesticide Program Dialogue Committee (PPDC) in May 2007, and in meetings with various other stakeholder groups. The PPDC, established under the Federal Advisory Committee Act, consists of a diverse group of stakeholders and provides an opportunity for feedback to the Agency's pesticide program on various pesticide regulatory, policy, and program implementation issues. Comments from the PPDC members were divided; some spoke in support of EPA's decision, but others expressed strong objections. See *http://www.epa.gov/pesticides/ppdc/2007/may2007/may2007.htm.*

C. Proposed Pesticide Registration (PR) Notice

The Agency developed a proposed framework and guidelines for evaluating requests to add cause marketing claims and third-party endorsements to pesticide labeling. EPA proposed that, at a minimum, the labeling of a registered product must be effective in providing both use instructions and necessary safety information. The Agency issued a draft PR Notice for comment on October 31, 2007 (72 FR 61638). The draft PR Notice defined what the Agency considered cause marketing claims (''a statement describing a relationship (usually philanthropic) between the registrant of the pesticide product and another entity, usually a charity'') and third-party endorsements (''an expression of approval or a recommendation to use a product made by an entity other than the applicant/registrant'').

The legal framework of the PR Notice rested primarily on the requirement that EPA determine that proposed pesticide

labeling would not be misbranded under FIFRA. Recommendations for data to be submitted for consideration included mock labels, documentation of the relationship between the registrant and charity or third-party endorser, discussion of potential consumer impacts, consumer market research, disclaimer language to minimize misunderstanding by consumers, and other supporting information. The intent of the PR notice was to set a high bar for consideration of claims that may have a higher likelihood to be considered false or misleading, or as detracting from use directions or other important information on the label or labeling. The proposed guidance outlined how applicants or registrants could demonstrate that the proposed language and logos did not distract from safe use instructions or violate the misbranding standard.

D. Public Comments on the PR Notice

EPA received a total of 119 comments on the draft PR Notice. Along with other background information, the comments appear in the public docket for this action: EPA–HQ–OPP–2007–1008. Of those, 108 opposed the draft PR Notice and 11 supported some or all of the components of the draft PR Notice. The following is a summary of the comments received.

1. *Opposition*. Those opposed to the PR Notice argued that labels should be used only to convey use instructions and safety information, not unnecessary endorsements or logos. They also noted that the labels of many (if not most) products are already crowded, and additional information would take space away or distract from elements required by statute and regulation. These claims would be designed to draw consumers' attention, potentially distracting them from the important health and safety information and undermining the protections implemented through label requirements. Commenters also asserted that EPA should not become involved in corporate marketing, which falls outside the Agency's mission of protecting human health and the environment and providing information on labeling to assist with the safe use of pesticide products. Since space on labels is limited, these comments urged EPA to refuse to allow extraneous information that is not needed for product identification, directions for use, or other text that minimizes risk and maximizes efficacy.

Some commenters also opposed the PR Notice because they believe that logos and claims are inherently misleading, i.e., that they imply safety claims or greater efficacy for a product. Commenters cited the FIFRA definition of misbranding (section 2(q)(1)(A)), claiming that, under this provision, cause marketing statements or third-party endorsements are inherently misleading. In addition, they cited 40 CFR 156.10(a)(5)(iii) which states that false and misleading statements include ones ''about the value of the product other than as a pesticide or device,'' which could be implied by a cause marketing claim or third-party endorsement. Commenters argued that consumers may interpret the logo of an organization they trust or from a celebrity as an implied endorsement. In addition, they argued that vulnerable populations such as elderly people, those with low literacy, and children may rely on the logo as the primary selection criteria, regardless of the intended use of the product.

As discussed above, EPA devotes significant resources to evaluation of labels and labeling and registration of products. Commenters argued that the additional level of review necessary to evaluate a cause marketing claim or third-party endorsement would divert Agency resources from evaluations of more important elements of the label and labeling required by the statute and regulation. The comments made a similar argument with respect to the allocation of resources in enforcement programs. Commenters argued that the resources of the Agency's pesticide program should not be diverted from the fundamental mission of protecting public health and the environment to evaluate claims that are designed as marketing or fundraising campaigns.

Commenters also asserted that the draft PR Notice conflicted with EPA's Label Review Manual (*http://www.epa.gov/oppfead1/labeling/lrm/*), a policy document on label and labeling content that uses the Red Cross logo as an example of a symbol that implies safety or non-toxicity, and could be considered false or misleading. They requested that the existing policy be followed. At the least, before accepting claims that could be viewed as inconsistent with the Label Review Manual and that could potentially endanger public health, commenters requested more demonstration of the expected public benefit and an explanation of why a change would be necessary.

Some commenters in opposition argued that the information EPA proposed to require would contain insufficient detail to allow the Agency to evaluate an application with a cause marketing claim or third-party endorsement. These commenters recommended that EPA provide more specific guidance, or implement requirements, for applicants to ensure that the information provided would prove the absence of any implied endorsement and false or misleading claims. They also suggested that information should be required to prove that the proposed cause marketing claim or third-party endorsement would not detract or distract from the required labeling elements.

Lastly, some commenters opposed the proposal because EPA decisions to allow cause marketing claims and third-party endorsements could conflict with states' decisions. They believed that there was insufficient meaningful consultation with the states through the State FIFRA Issues Research and Evaluation Group. Allowing these types of claims could make the Federal standard more lenient than some state regulations, and could prevent states from denying registration of these products if they find a risk concern.

2. *Support*. Comments in support of the draft PR Notice fell into two categories. One group recommended that EPA limit the scope of the draft PR Notice only to cause marketing claims and that EPA should issue a final PR Notice with only modest changes to the draft. As for third-party endorsements, these comments recommended that EPA establish a public engagement process for further consideration of the issues raised by such labeling. The other group supported changing the emphasis of the PR Notice to focus on third-party endorsements from established organizations and environmentally preferable or ''green'' certification programs.

Those who supported approving the PR Notice for cause marketing claims argued that this type of claim should be held to the same standards as any other non-FIFRA text added to the label. They asserted that no additional information (beyond the current requirements) should be necessary unless there is a concern that the cause marketing claim could have an implied safety message. In a similar vein, they stated that additional publicengagement—beyond what FIFRA mandates—would be unnecessary and improper, because the public and states are not currently involved in registration decisions and it would be improper to engage outside stakeholders in the case of cause marketing claims.

Another group of comments expressed support for the draft PR Notice because it would make the inclusion of third-party endorsements in pesticide labeling more likely. These comments argued that there is an Agency precedent for allowing certain

logos or endorsements on labels. Specifically, endorsements by the Organic Material Review Institute and the Soil and Mulch Council were cited. They also proposed that approving standards established by third-party certification programs such as Design for the Environment and Green Seal would alleviate burden on EPA during the application review process while providing information to consumers to assist them in differentiating between products based on environmental, efficacy-based and other quantitative characteristics.

VI. Agency Action

The Agency has decided to withdraw the PR Notice describing framework for evaluating cause marketing claims or third-party endorsements. After reviewing public comments, the Agency agrees that cause marketing claims and third-party endorsements as outlined in the draft PR Notice generally would not contribute meaningfully to improving protection of human health and the environment. The addition of such statements is not likely to enhance users' ability to understand the labeling required to inform the user about how to use the product safely and effectively. In fact, the addition of such statements could interfere with that goal. In addition, EPA recognizes that its resources are limited and should be targeted towards activities that will enhance the level of protection of human health and the environment from pesticides. Thus, although EPA will review any future application it receives, it generally discourages the submission of applications to add cause marketing claims or third-party endorsements.

In reviewing the legal framework on which the PR Notice was based, the Agency concluded that FIFRA and its implementing regulations do not explicitly prohibit the inclusion of cause marketing claims or third-party endorsements in labeling, nor do they differentiate between the two types of claims. Therefore, EPA will continue to review and make decisions on applications to for new or amended pesticide labeling using the standards in FIFRA section 3(c)(5)(A)–(D). Consistent with existing policy, EPA will not approve a statement in the labeling of a pesticide product unless the applicant can demonstrate that the statement is not false or misleading and that the presence of the statement detracts from other information required on the labeling.

If EPA receives applications to add such labeling to product labeling, EPA will decide on a case-by-case basis what types of information would be necessary to allow the Agency to evaluate such an application. In recognition of concerns about such claims' potential impact on public health and their potential burden on EPA resources, the Agency will expect applicants to supply a complete justification to support the proposed additions. While it is difficult for the Agency to identify the exact types of information it will need in every circumstance, applicants should understand that they must submit sufficient information to allow the Agency to determine that the desired statements will not mislead pesticide users, especially vulnerable subpopulations, and will not detract from other important language on the label. Ultimately, the applicant has the responsibility to provide the Agency with sufficient information to allow the Agency to make the necessary findings. See 40 CFR part 158. If, upon initial review, the Agency finds that the applicant has not met its burden, EPA may request additional information from the applicant to facilitate further consideration of the proposal. 40 CFR 158.75. Failure to provide requested information could lead EPA to deny the application.

The Agency will also review and decide on a case-by-case basis whether to approve such applications. As indicated above, the legal standards for such reviews appear in FIFRA section 3(c)(5), as informed by the definition of ''misbranding'' in FIFRA section 2(q). Also, as discussed above, product labeling plays a critical role in the effective regulation of pesticides, and the Agency thinks clear, simple, and enforceable labeling is essential to ensuring pesticides do not cause unreasonable adverse effects on the environment. Since most cause marketing claims or third-party endorsements ordinarily do not provide information that contributes to the safe and effective use of a pesticide, EPA will approve applications to add cause marketing claims or third-party endorsements only if the applicant provides information to show that the inclusion of such text will neither create a misleading impression in any significant subgroup of the population of people who might use or otherwise come into contact with the product nor interfere with the ability of people who use the product to understand how to use the product properly. The decision about whether to approve the proposed addition of such labeling text would likely depend on the proposed content and placement of the text, the nature of the existing labeling, and the potential risks associated with the use of the pesticide, among other characteristics. EPA expects that, in general, it would be difficult to convince EPA to approve applications to add most types of cause-marketing claims or third-party endorsements.

Based on the experience with the cause marketing claim proposed by Clorox, EPA expects that there would be a high level of public concern about future requests for consideration of such claims. Given the controversial and complicated nature of these types of claims, EPA believes it would benefit from consultation with states and a public comment period. Although it has not been historical practice, if EPA receives applications to add cause marketing claims or third-party endorsements that have enough information to support the approval of such a claim, it would likely offer its state partners, as well as the public, an opportunity to comment. Any public engagement would be conducted in a manner consistent with FIFRA requirements to protect Confidential Business Information (CBI).

In light of the significant interest in improving users' understanding of and ability to use products safely and effectively, EPA agrees with public comments that comparative safety statements, or ''green labeling,'' on pesticide labels should be further considered as a tool. Companies have found that consumers are interested in having labeling on products indicating that the products meet a specific set of criteria, for example that they are safer or environmentally preferable according to a specific standard. Programs to set standards for such green labeling include: Energy Star, Design for the Environment, and Green Seal. Experience also suggests that some consumers will alter their behavior to use products bearing such green labeling.

As a first step, the Office of Pesticide Programs will engage a work group under the Pesticide Program Dialogue Committee on comparative safety statements or logos for pesticide product labeling. This work group will address interest being expressed by the public for possible development of Agency or third-party standards regarding comparative product safety. The work group will make recommendations to the full Pesticide Program Dialogue Committee as to whether the government should pursue revision of the current regulations at 40 CFR 156.10(a)(5) in order to develop or allow these types of statements or logos.

EPA anticipates that these types of comparative safety statements would be

used by consumers as tools, to assist them in differentiating between similar types of products based on distinct, verifiable criteria. For example, a logo from the National Organic Standards Board could assist a grower seeking to obtain or maintain organic certification for his/her farm. Labels could provide information about the comparative safety of the product as well as about its potential environmental impact, allowing consumers to choose among products based on their preferences. Along with the recommendations from the PPDC work group, EPA will consider the potential risks associated with including these types of statements on pesticide labeling and the proper role of government in this type of program before deciding whether or not to revise the current regulations.

In summary, the Agency is committed to ensuring that pesticide labeling is utilized as a tool to communicate critical information to the user how to use the product safely and effectively. In order to ensure that protection of public health and the environment remain the top priorities for EPA, we are not encouraging submissions of any label claims that detract or distract from the use and safety instructions or that could be considered false or misleading. We remain committed to programs and initiatives designed to improve the content, organization and enforceability of pesticide labeling.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 24, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–22938 Filed 9–29–08; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 9, 2008, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 11, 2008.

B. New Business—Regulation

- Disclosure and Accounting Requirements—Proposed Rule—12 CFR Parts 619, 620, and 621.

C. Reports

- OE Quarterly Report and Funding the Farm Credit System (FCS):
  - Financial Condition of FCS.
  - Funding the FCS.

Closed Session *

- Supervisory and Oversight Activities of FCS Institutions.

Dated: September 26, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–23077 Filed 9–26–08; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 08–05]

City of Los Angeles, CA, Harbor Department of the City of Los Angeles, Board of Harbor Commissioners of the City of Los Angeles, City of Long Beach, California, Harbor Department of the City of Long Beach, and the Board of Harbor Commissioners of the City of Long Beach—Possible Violations of Sections 10(B)(10), 10(D)(1) and 10(D)(4) of the Shipping Act of 1984; Order of Investigation and Hearing

On November 20, 2006, the governing boards of the Ports of Los Angeles and Long Beach voted to approve the San Pedro Bay Ports Clean Air Action Plan (''CAAP''). The CAAP is a broad effort aimed at significantly reducing the health risks posed by air pollution from port-related ships, trains, drayage trucks, terminal equipment and harbor craft by at least 45 percent in five years. To that end, each port has adopted a Clean Truck Program (''CTP'') as a component of the CAAP to address air pollution caused by the short haul truckers that transport containers to and from the ports, *i.e.*, the harbor truck drayage system. Each port's CTP becomes effective on October 1, 2008.

The Federal Maritime Commission (''Commission'') is responsible for enforcing the requirements of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (''Shipping Act''). 46 U.S.C. 40101 *et seq.* As the ports of Los Angeles and Long Beach operate as marine terminal operators (''MTOs'') under the Shipping Act, their actions, to the extent they impact international transportation, are subject to the Commission's jurisdiction and, in particular, to the requirements of section 10 of the Shipping Act.[1]

While the Commission appreciates the significant environmental and public health benefits of the San Pedro Ports CAAP, it is concerned that certain aspects of the ports' CTPs may violate the Shipping Act. Accordingly, the Commission has determined to initiate an Investigation and Hearing of the Ports' Clean Truck Programs under section 11 of the Shipping Act with respect to possible violations under section 10 of the Shipping Act.

San Pedro Bay Ports

The Port of Los Angeles (''POLA''), referred to as the Los Angeles Harbor Department, is a self-supporting department of the City of Los Angeles, California. POLA is under the control of a five-member Board of Harbor Commissioners appointed by the mayor of Los Angeles and approved by the City Council, and is administered by an executive director.[2] POLA is the largest container port in the United States. POLA's annual loaded container volume for 2007 was 5.7 million twenty-foot equivalent units (''TEUs'').

The Port of Long Beach (''POLB'') has an administrative structure similar to

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[1] Section 10(d)(1) requires MTOs to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. 46 U.S.C. 41102(c). Section 10(d)(4) provides that an MTO may not give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person. 46 U.S.C. 41106(2). An MTO may not unreasonably refuse to deal or negotiate. 46 U.S.C. 41106(3).

[2] For the purposes of this order, the City of Los Angeles, the Harbor Department of the City of Los Angeles and the Board of Harbor Commissioners of the City of Los Angeles will be referred to as the Port of Los Angeles or POLA.

POLA. POLB is a public agency managed and operated by the City of Long Beach Harbor Department. POLB is governed by the Long Beach Board of Harbor Commissioners, whose five members are appointed by the mayor of Long Beach and confirmed by the City Council. POLB is administered by an executive director.[3] POLB is the second largest port in the United States. POLB's annual loaded container volume for 2007 was more than 4.9 million TEUs.

POLA and POLB are located side-by-side in San Pedro Bay and together are referred to as the San Pedro Bay Ports. Together they would constitute the 5th largest container port in the world. While the two ports compete for business, they cooperate on infrastructure projects and environmental issues pursuant to agreements filed with the Commission. It is reported that approximately 16,800 trucks, affiliated with an estimated 600–1,200 licensed motor carriers (''LMCs''), transport containers to and from the ports. At present, nearly all of the trucks are operated by independent owner operators.

The Clean Truck Programs

Central to each port's CTP is a system to control truck access to the container terminals through the issuance of port concessions to LMCs. Each CTP presently provides that after October 1, 2008, entry to container terminals at the ports will be limited to licensed motor carriers that have a concession agreement.[4] Carriers serving both ports must have a separate concession from each port. To obtain a concession, an LMC must file an application (with a $2,500 fee for POLA, and $250 for POLB, plus an annual fee of $100 per truck in both ports) in which it presents an appropriate maintenance plan for trucks used at the port; ensures that all trucks comply with safety, regulatory and security requirements, and that drivers have obtained their Transportation Worker Identification Credential; agrees to searches; maintains prescribed insurance levels; equips trucks with prescribed devices to allow for the electronic reading of certain data concerning the truck; ensures compliance with parking ordinances; agrees to hiring preferences for drivers with port experience; and agrees to travel only on specified truck routes established by local municipalities or the ports.

There are certain differences between the CTPs of the two ports. POLA requires that all approved concessionaires transition to providing port service only with company-employee drivers. This requirement is phased in over a 5-year period commencing January 1, 2009. By December 31, 2013, all concession drivers at POLA must be company employees. Independent owner-operators will not be permitted entry to the container terminals. POLB has no similar mandate and will permit concessionaires to continue to provide service with either employee drivers, independent owner-operators or a combination of both, as is presently allowed. POLA also requires concession applicants to submit for approval a plan that limits parking to off-street locations. No on-street parking will be allowed for trucks not in service. POLB, on the other hand, requires applicants to submit a parking plan that demonstrates either the availability of off-street parking or legal on-street parking. POLA also requires applicants to submit financial statements and a statement of business experience at the port, in drayage service, and with owner-operators or driver employees, together with references to verify this information. POLB does not have a similar requirement.

The applications of both ports provide that submission of an application does not guarantee an award of a concession. There are no published criteria or standards governing the granting or denial of concessions. Both ports require the LMC to register its drayage vehicles in a Drayage Truck Registry (DTR) identifying the vehicle and all of its pertinent details, including the model year of the truck and its engine. Only vehicles registered in the DTR will be permitted entry to the container terminals.

Also as part of their CTPs, both ports have adopted a truck ban by which trucks older than model year 1989 will be prohibited from entering terminal premises on and after October 1, 2008. Thereafter, the program progressively bans trucks that do not meet 2007 federal Environmental Protection Agency (''EPA'') emission standards by January 1, 2012. Each port has adopted truck replacement programs to assist truckers to purchase or upgrade to 2007-compliant trucks through grants and lease-to-own plans. State and port funds, as well as funds derived from a Clean Truck Fee, will be used to finance the truck replacement programs through a Clean Truck Fund maintained by each port.

Commencing October 1, 2008, a fee of $35 per loaded TEU, or $70 per FEU, will be collected from the beneficial cargo owner on every container entering or exiting the terminals by truck. Containers entering or leaving the ports by rail and those moving between terminals at the ports are not subject to the fee. Both ports will exempt collection of the fee where the truck hauling the container was privately financed and is compliant with the 2007 federal EPA standards and meets certain conditions. Each port maintains slight variations with respect to eligibility for the exemption depending on whether the truck's fuel is diesel or an alternative fuel such as LNG; when the vehicle was purchased; whether an old truck was scrapped; and whether it was purchased with program funds. Verification of eligibility and enforcement of access to the terminals as well as collection of the Clean Truck Fee are to be the responsibilities of the MTO tenants of the ports. Provisions governing these requirements are published in the respective tariffs of the ports.

The Port of Los Angeles Incentive Program

On August 21, 2008, POLA adopted two additional incentives to encourage companies operating 2007 or newer compliant trucks to become concessionaires and commit to a stated minimum of service at POLA. One incentive offers a cash payment of $20,000 for each 2007 EPA-compliant truck that is privately funded and committed to service in the port drayage market at a minimum frequency of 6 trips per week for 5 years. Carriers interested in participating were required to submit a letter of interest by September 19, 2008, stating the number of eligible trucks operated, the number to be initially committed to port service, and the number to be added monthly. The other incentive provides for a cash payment of $10 per dray by a 2007 EPA-compliant truck, if the truck achieves a minimum target of 600 qualified drays per year in and out of POLA and POLB, and 300 of those drays are for POLA cargo. There is a per truck limit on this incentive of $10,000 for the year commencing October 1, 2008. Incentive payments for both programs will be made from the Clean Truck Fund and other port funds. Successful applicants

[3] For the purposes of this order, the City of Long Beach, California, the Harbor Department of the City of Long Beach and the Board of Harbor Commissioners of the City of Long Beach will be referred to as the Port of Long Beach or POLB.

[4] The concession requirement has been challenged in federal court. *See American Trucking Associations* v. *City of Los Angeles, et al.,* No. 08–04920, C.D. Calif. The district court has denied a request for preliminary injunction, and this decision has been appealed. The outcome of the legal action by the American Trucking Associations does not affect the Commission's authority to institute this investigation.

for the payment will be selected at the sole discretion of the port staff.

Commission Authority

A marine terminal operator is defined as ''a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to sub-chapter 11 of chapter 135 of title 49, United States Code.'' 46 U.S.C. 40102(14). Section 10(d)(1) of the Shipping Act states that a ''[c]ommon carrier, ocean transportation intermediary, or marine terminal operator may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' 46 U.S.C. 41102(c). Under section 10(d)(4), ''[a] marine terminal operator may not give any undue or unreasonable preference or advantage or impose any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person;'' 46 U.S.C. 41106(2). Section 10(b)(10) of the Shipping Act prohibits a marine terminal operator from unreasonably refusing to deal or negotiate. 46 U.S.C. 41106(3).

The Commission is responsible for ensuring that the practices and regulations of marine terminal operators are just and reasonable. Under Section 10(d), a regulation or practice must be tailored to meet its intended purpose. It may have a valid purpose and yet be unreasonable because it goes beyond what is necessary to achieve that purpose. *Distribution Services, Ltd.* v. *TransPacific Freight Confer. of Japan,* 24 SRR 714, 722 (FMC, 1988). The test of reasonableness as applied to MTOs requires that actions and practices ''be otherwise lawful, not excessive and reasonably related, fit and appropriate to the ends in view.'' *Exclusive Tug Arrangements in Port Canaveral,* 29 SRR 487, 489 (FMC, 2002) and *West Coast Maritime Association* v. *Port of Houston,* 18 SRR 783, 790 (1978), 610 F2d 100 (D.C. Cir. 1979), *cert. denied,* 449 U.S. 822 (1980).

Now therefore, it is ordered, That pursuant to section 11(c) of the Shipping Act of 1984, 46 U.S.C. 41303(c), an investigation is instituted to determine:

1. Whether Respondent Port of Los Angeles has failed to establish, observe, and enforce just and reasonable regulations and practices in violation of section 10(d)(1) of the Shipping Act by mandating, on a phased-in basis, that LMCs providing drayage service to the Port utilize only employee drivers;

2. Whether Respondent Port of Los Angeles provides an undue or unreasonable preference or advantage or imposes any undue or unreasonable prejudice or disadvantage with respect to any person in violation of section 10(d)(4) of the Shipping Act by implementing, on a phased-in basis, a ban on independent owner operators providing drayage service at the Port;

3. Whether Respondent Port of Los Angeles has failed to establish, observe and enforce just and reasonable regulations and practices in violation of section 10(d)(1) of the Shipping Act or provides an undue or unreasonable preference or advantage or imposes any undue or unreasonable prejudice or disadvantage with respect to any person in violation of section 10(d)(4) of the Shipping Act, by making payments to certain selected motor carriers as incentive to provide drayage service at the port, but not to others;

4. Whether Respondent Port of Los Angeles has failed to establish, observe and enforce just and reasonable regulations and practices in violation of section 10(d)(1) of the Shipping Act or provides an undue or unreasonable preference or advantage or imposes any undue or unreasonable prejudice or disadvantage with respect to any person in violation of section 10(d)(4) of the Shipping Act, by denying access to terminal facilities to drayage carriers absent port-approved arrangements to park their vehicles on off-street premises;

5. Whether Respondents Port of Long Beach and Port of Los Angeles have failed to establish, observe and enforce just and reasonable regulations and practices in violation of section 10(d)(1) of the Shipping Act, or give an undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person in violation of section 10(d)(4) of the Shipping Act, by exempting from the $35/TEU Clean Truck Fee those beneficial cargo owners whose cargo is moved by privately financed, 2007 compliant trucks, while imposing fees on those beneficial cargo owners whose cargo is moved by publicly financed 2007 compliant trucks and trucks manufactured between 1989 and 2006;

6. Whether Respondents Port of Long Beach and Port of Los Angeles have failed to establish, observe and enforce just and reasonable regulations and practices in violation of section 10(d)(1) of the Shipping Act by requiring motor carriers providing container drayage service at the ports to submit an application for a concession, but not publishing standards or criteria by which such application will be granted or denied;

7. Whether Respondent Port of Los Angeles violated section 10(b)(10) of the Shipping Act by refusing to deal or negotiate with motor carriers otherwise authorized to provide drayage service at the port who conduct their port operations using independent owner-operators;

8. Whether, in the event one or more violations of section 10 of the Shipping Act are found, civil penalties should be assessed and, if so, the identity of the entities against whom the penalties should be assessed and the amount of the penalties to be assessed;

9. Whether, in the event violations are found, appropriate cease and desist orders should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That the following entities be designated as Respondents in this proceeding:

City of Los Angeles, California; Harbor Department of the City of Los Angeles; Board of Harbor Commissioners of the City of Los Angeles; City of Long Beach, California; Harbor Department of the City of Long Beach; Board of Harbor Commissioners of the City of Long Beach;

It is further ordered, That the Commission's Bureau of Enforcement be designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on all parties of record;

It is further ordered, That other persons having an interest in

participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on all parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573,in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by September 24, 2009 and the final decision of the Commission shall be issued by January 22, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. E8–22942 Filed 9–29–08; 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 October 15, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. James C. France, Daytona Beach, Florida, to acquire voting shares of CenterBank, Inc., and thereby indirectly acquire voting shares of CenterBank of Jacksonville, N.A., both of Jacksonville, Florida.

Board of Governors of the Federal Reserve System, September 25, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–22930 Filed 9–29–08; 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 October 24, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Broward Financial Holdings, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Broward Bank of Commerce, both of Fort Lauderdale, Florida.

Board of Governors of the Federal Reserve System, September 25, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–22929 Filed 9–29–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30–Day Public Comment Request, Grants.Gov; 30-day Notice

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: SF–424 Short Organizational—Revision—OMB No. 4040–0003—Grants.gov.

Abstract: This is a request for a revision of a previously approved collection. The SF–424 Short organizational form is used by the 26 Federal grant-making agencies as a simplified alternative to the SF–424 standard form. Agencies may use the SF–424 Short Organizational form for grant programs not required to collect all the data that is required on the SF–424 standard form.

The form is being revised with changes to the data field that collects the Social Security Number (SSN). The SSN field is an optional field. The current collection pre-fills the first five digits with ''xxx-xx'' and only collects the last four digits of the SSN. At OMB's request, we reviewed the usefulness of collection of a portion of the SSN, by polling the Agencies that used the SF–424 Short Organizational form; however, it was determined that the partial SSN is not useful for processing the SF–424 Short Organizational form by the Agencies. Therefore, no portion of the SSN will be collected as part of the electronic grant application process. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
NEA	4130	1	20/60	1377
NEH	2328	1	30/60	1,164
DOI	148	2.81	18/60	125
HHS	3903	1	30/60	1952
DOS	800	1	20/60	267
Total				4,885

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–22975 Filed 9–29–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0260]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation—OMB No. 0990–0260—Office for Human Research Protections.

Abstract: Section 491(a) of Public Law 99–158 states that the Secretary of HHS shall by regulation require that each entity applying for HHS support (e.g., a grant, contract, or cooperative agreement) to conduct research involving human subjects submit to HHS assurances satisfactory to the Secretary that it has established an institutional review board (IRB) to review the research in order to ensure protection of the rights and welfare of the human research subjects. IRBs are boards, committees, or groups formally designated by an entity to review, approve, and have continuing oversight of research involving human subjects.

Pursuant to the requirement of the Public Law 99–158, HHS promulgated regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects. The June 18, 1991 adoption of the common Federal Policy (56 FR 28003) by 15 departments and agencies implements a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1974, by Public Law 95–622. The Common Rule is based on HHS regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects.

The respondents for this collection are institutions engaged in such research. Institutional adherence to the Common Rules also is required by other federal departments and agencies that have codified or follow the Common Rule which is identical to 45 CFR part 46, subpart A.

The information being requested related to the Common Rule should be readily available to the institution or organization that registers the IRB.

The burden estimates for the Common Rule include those recently approved for use of the Federalwide Assurance (FWA) form under Control Number 0990–0278 and for the IRB Registration Form that was recently approved under Control Number 0990–0279, and for the institutional review board (IRB) verification (former Optional Form 310).

The burden estimate for the sections of the Common Rule that require reporting or recordkeeping are shown in the burden table below. The number of respondents is the number of IRBs registered utilizing OMB 0990–0279.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Title	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
.103(b)(4), .109(d) IRB Actions, .116 and .117 Informed Consent	6,000	39.33	1	235,980
.115(a) IRB Recordkeeping	6,000	15	10	900,000
.103(b)(5) Incident Reporting, .113 Suspension or Termination Reporting	6,000	0.5	45/60	2,250
Total				1,138,230

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–22976 Filed 9–29–08; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request, 30-Day Public Comment Request, Grants.Gov; 30-Day Notice

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: SF–424 Individual—Revision—OMB No. 4040–0005—Grants.gov.

Abstract: This is a request for a revision of a previously approved collection. It is a simplified, alternative government-wide data set and application cover page for use by Federal grant-making agencies that award grants to individuals. The form is being revised with changes to the data field that collects the Social Security Number (SSN). The SSN field is an optional field. The current collection pre-fills the first five digits with ''xxx-xx'' and only collects the last four digits of the SSN. At OMB's request, we reviewed the usefulness of collection of a portion of the SSN, by polling the Agencies that used the SF–424 Individual form; however, it was determined that the partial SSN is not useful for processing the SF–424 Individual form by the Agencies. Therefore, no portion of the SSN will be collected as part of the electronic grant application process. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
NEA	1,150	1	10/60	192
NEH	2,593	1	30/60	1,297
USDA	4,069	1	30/60	2,035
HHS	600	1	30/60	300
Total				3,824

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–22977 Filed 9–29–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting; National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice, FACA Committee Meeting Announcement.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the First Meeting of the National Commission on Children and Disasters, Department of Health and Human Services. The meeting will be held from approximately 8:30 a.m. to 5 p.m. on Tuesday, October 14, 2008, at the

Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

FOR FURTHER INFORMATION CONTACT: Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *roberta.lavin@acf.hhs.gov* or (202) 401–9306.

SUPPLEMENTARY INFORMATION: The National Commission on Children and Disasters (henceforth ''the Commission'') is a commission that shall independently conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluations of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities. The Commission shall then submit a report to the President, the Secretary of Health and Human Services, and the Congress on the Commission's independent and specific findings, conclusions, and recommendations to address the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies. The Commission implements the intent of Congress as expressed in The Consolidated Appropriations Act, 2008 (Pub. L. 110–161), Division G, Title VI, (henceforth ''the Act'') signed into law on December 26, 2007, authorizing funds for a body performing the functions here assigned to the Commission.

The Commission will hear presentations on and discuss: (1) The Department of Health and Human Services' efforts to support the needs of children in disaster situations; (2) the Federal Emergency Management Administration's efforts to support the needs of children in disaster situations; (3) White House perspectives on the Administration's efforts to support the needs of children in disaster situations; and (4) plans for future work of the Commission.

The meeting will be open to the public; however, seating is limited and pre-registration is encouraged. To pre-register, please e-mail *carol.apelt@acf.hhs.gov* with ''Meeting Registration'' in the subject line, or call Carol Apelt at (202) 205–4618 by 5 p.m. EST, October 9, 2008. Registration must include your name, affiliation, phone number. If you require a sign language interpreter or other special assistance, please call Carol Apelt at (202) 205–4618 as soon as possible and no later than October 6, 2008.

Dated: September 24, 2008.

Charles Keckler,

Deputy Assistant Secretary for Policy for Children and Families.

[FR Doc. E8–22939 Filed 9–29–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0270] (formerly Docket No. 2007N–0357)

Medical Device User Fee and Modernization Act; Notice to Public of Web Location of 2009 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Web location where the agency will post a list of guidance documents the Center for Devices and Radiological Health (CDRH) is considering for development in fiscal year (FY) 2009. In addition, FDA has established a docket where stakeholders may provide comments and/or draft language for those topics as well as suggestions for new or different guidances.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Deborah A. Wolf, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–2350.

SUPPLEMENTARY INFORMATION:

I. Background

During negotiations over the reauthorization of the Medical Device User Fee and Modernization Act (MDUFMA), FDA agreed, in return for additional funding from industry, to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. These commitments include annually posting a list of guidance documents that CDRH is considering for development and providing stakeholders an opportunity to provide comments and/or draft language for those topics, or suggestions for new or different guidances. This notice announces the Web location of the list of guidances (see § 10.115(c)(1) (21 CFR 10.115(c)(1))) on which CDRH is intending to work over the next FY. We note that the agency is not required to issue every guidance on the list, nor is it precluded from issuing guidance documents that are not on the list. The list includes topics that currently have no guidance associated with them, topics where updated guidance may be helpful, and topics for which CDRH has already issued level 1 drafts that may be finalized following review of public comments. We will consider stakeholder comments as we prioritize our guidance efforts.

FDA and CDRH priorities are subject to change at any time. Topics on this and past guidance priority lists may be removed or modified based on current priorities. We also note that CDRH's experience over the years has shown that there are many reasons CDRH staff does not complete the entire annual agenda of guidances it undertakes. Staff are frequently diverted from guidance development to other activities, including review of premarket submissions or postmarket problems. In addition, the Center is required each year to issue a number of guidances that it cannot anticipate at the time the annual list is generated. These may involve newly identified public health issues as well as special control guidance documents for de novo classifications of devices. It will be helpful, therefore, to receive comments that indicate the relative priority of different guidance topics to interested stakeholders.

Through feedback from stakeholders, including draft language for guidance documents, CDRH expects to be able to better prioritize and more efficiently draft guidances that will be useful to industry and other stakeholders. This will be the second annual list CDRH has posted. FDA intends to update the list each year.

FDA invites interested persons to submit comments on any or all of the guidance documents on the list. FDA has established a specific docket (see docket number found in brackets in the heading of this document) where comments about the FY 2009 list, draft language for guidance documents on those topics, and suggestions for new or different guidances may be submitted. FDA believes this docket is an

important tool for receiving information from interested parties and for sharing this information with the public. Similar information about planned guidance development is included in the annual agency-wide notice issued by FDA under its good guidance practices (§ 10.115(f)(5)). The CDRH list, however, will be focused exclusively on device-related guidances and will be made available on FDA's Web site prior to the beginning of each FY from 2008 to 2012.

To access the list of the guidance documents CDRH is considering for development in 2009, visit the FDA Web Site at *http://www.fda.gov/cdrh/mdufma/guidance/agenda/fy09.html*.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see ADDRESSES) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments submitted to this docket may include draft guidance documents that stakeholders have prepared for FDA's consideration.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: September 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–22911 Filed 9–29–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 30, 2008, from 9 a.m. to 1 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 1750 Rockville Pike, Rockville, MD, 301–468–1100.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512531. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The meeting will be open to the public from 8 a.m. to 9 a.m., unless public participation does not last that long, from 9 a.m. to 1 p.m., the meeting will be closed to permit discussion of current and future advances on antiviral drugs which will include the review of trade secret and/or confidential information.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: On October 30, 2008, from 8 a.m. to 9 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 16, 2008. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 7, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 8, 2008.

Closed Committee Deliberations: On October 30, 2008, from 9 a.m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). During this session, the committee will be updated on current and future advances on antiviral drugs.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 19, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–22912 Filed 9–29–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Meeting of the Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the fourteenth meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 8:30 a.m. to 5 p.m. on November 13, 2008, and from 8:30 a.m. to 3 p.m. on November 14, 2008, at the Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

ACOT will hear presentations on the Report on New York State Transplant Council's Committee on Quality Improvement in Living Kidney Donation; Organ Procurement Organization Quality Assessment/Performance; Status of OPTN Living Donor Follow Up; Risks for Disease Transmission; Factors Affecting Future Donor Potential; Reimbursement and the Changing Nature of the Donor Pool; Projected Growth in End-Stage Renal Disease and Implications for Future Demand for Kidney Transplants; Economic Impact of Transplantation; and Briefing on OPTN White Paper on Charges for Pancreata Recovered for Islet Transplantation. The three ACOT work groups also will update the full Committee on their deliberations on living donor advocacy and post-donation complications, sources of funding for additional data collection, and reducing pediatric deaths on the waitlist.

The draft meeting agenda will be available on October 31 on the Department's donation Web site at *http://www.organdonor.gov/acot.html*.

A registration form will be available on or about October 15. Registration can be completed electronically at *http://www.team-psa.com/dot/acot2008/*. Registration also can be completed through the Department's donation Web site at *http://www.organdonor.gov/acot.html*. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701. Individuals without access to the Internet who wish to register may call Sowjanya Kotakonda with PSA at (703) 234–1737. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Secretary, Remy Aronoff, in advance of the meeting. Mr. Aronoff may be reached by telephone at 301–443–3300, e-mail: *remy.aronoff@hrsa.hhs.gov* or in writing at the address provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C–06, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentations and ACOT discussions, members of the public will have an opportunity to provide comments. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: September 23, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–22821 Filed 9–29–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

OIG Supplemental Compliance Program Guidance for Nursing Facilities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the supplemental compliance program guidance (CPG) for nursing facilities developed by the Office of Inspector General (OIG). OIG is supplementing its prior CPG for nursing facilities issued in 2000. The supplemental CPG contains new compliance recommendations and an expanded discussion of risk areas. The supplemental CPG takes into account Medicare and Medicaid nursing facility payment systems and regulations, evolving industry practices, current enforcement priorities (including the Government's heightened focus on quality of care), and lessons learned in the area of nursing facility compliance. The supplemental CPG provides voluntary guidelines to assist nursing facilities in identifying significant risk areas and in evaluating and, as necessary, refining ongoing compliance efforts.

FOR FURTHER INFORMATION CONTACT: Amanda Walker, Associate Counsel, Office of Counsel to the Inspector General, (202) 619–0335; or Catherine Hess, Senior Counsel, Office of Counsel to the Inspector General, (202) 619–1306.

Background

Beginning in 1998, OIG embarked on a major initiative to engage the private health care community in preventing the submission of erroneous claims and in combating fraud and abuse in the Federal health care programs through voluntary compliance efforts. As part of that initiative, OIG has developed a series of CPGs directed at the following segments of the health care industry: Hospitals; clinical laboratories; home health agencies; third-party billing companies; the durable medical equipment, prosthetics, orthotics, and supply industry; hospices; Medicare Advantage (formerly known as

Medicare+Choice) organizations; nursing facilities; ambulance suppliers; physicians; and pharmaceutical manufacturers.[1] It is our intent that CPGs encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. The suggestions made in the CPGs are not mandatory, and nursing facilities should not view the CPGs as exhaustive discussions of beneficial compliance practices or relevant risk areas.

OIG originally published a CPG for the nursing facility industry on March 16, 2000.[2] Since that time, there have been significant changes in the way nursing facilities deliver, and receive reimbursement for, health care services, as well as significant changes in the Federal enforcement environment and increased concerns about quality of care in nursing facilities, which continues to be a high priority of OIG. In response to these developments, and in an effort to receive initial input on this guidance from interested parties, OIG published a notice in the **Federal Register** on January 24, 2008, seeking stakeholder comments.[3] After consideration of the public comments and the issues raised, OIG published a draft supplemental CPG for Nursing Facilities in the **Federal Register** on April 16, 2008, to ensure that that all parties had a reasonable and meaningful opportunity to provide input into the final product.[4]

We received seven comments on the draft document, all from trade associations. We also held stakeholder meetings with the commenters who chose to meet with us. OIG considered the written comments and input from the meetings during the development of the final supplemental CPG. Commenters uniformly supported OIG's efforts to update the 2000 Nursing Facility CPG. Some of the commenters suggested that OIG clarify the draft supplemental CPG to reflect more fully the role consultant pharmacists can play, in conjunction with other members of residents' care teams, in achieving appropriate medication management in nursing facilities. Other commenters suggested modifications to other aspects of the draft supplemental CPG, including physician roles and contractual issues. The final supplemental CPG incorporates clarifications responsive to these comments. Several commenters suggested legislative or policy changes outside the scope of the supplemental CPG, and those comments are not addressed by the final supplemental CPG.

In the draft supplemental CPG, we specifically solicited suggestions regarding specific measures of compliance program effectiveness tailored to nursing facilities. We did not receive suggestions proposing such measures, and therefore did not include an effectiveness measures section in the final supplemental CPG.

OIG Supplemental Compliance Program Guidance for Nursing Facilities

This document is organized in the following manner:

I. Introduction
A. Benefits of a Compliance Program
B. Application of Compliance Program Guidance
II. Reimbursement Overview
A. Medicare
B. Medicaid
III. Fraud and Abuse Risk Areas
A. Quality of Care
1. Sufficient Staffing
2. Comprehensive Resident Care Plans
3. Medication Management
4. Appropriate Use of Psychotropic Medications
5. Resident Safety
(a) Promoting Resident Safety
(b) Resident Interactions
(c) Staff Screening
B. Submission of Accurate Claims
1. Proper Reporting of Resident Case-Mix by SNFs
2. Therapy Services
3. Screening for Excluded Individuals and Entities
4. Restorative and Personal Care Services
C. The Federal Anti-Kickback Statute
1. Free Goods and Services
2. Service Contracts
(a) Non-Physician Services
(b) Physician Services
3. Discounts
(a) Price Reductions
(b) Swapping
4. Hospices
5. Reserved Bed Payments
D. Other Risk Areas
1. Physician Self-Referrals
2. Anti-Supplementation
3. Medicare Part D
E. HIPAA Privacy and Security Rules
IV. Other Compliance Considerations
A. An Ethical Culture
B. Regular Review of Compliance Program Effectiveness
V. Self-Reporting
VI. Conclusion

I. Introduction

Continuing its efforts to promote voluntary compliance programs for the health care industry, the Office of Inspector General (OIG) of the Department of Health and Human Services (Department) publishes this Supplemental Compliance Program Guidance (CPG) for Nursing Facilities.[5] This document supplements, rather than replaces, OIG's 2000 Nursing Facility CPG, which addressed the fundamentals of establishing an effective compliance program for this industry.[6]

Neither this supplemental CPG, nor the original 2000 Nursing Facility CPG, is a model compliance program. Rather, the two documents collectively offer a set of guidelines that nursing facilities should consider when developing and implementing a new compliance program or evaluating an existing one. We are mindful that many nursing facilities have already devoted substantial time and resources to compliance efforts. For those nursing facilities with existing compliance programs, this document may serve as a roadmap for updating or refining their compliance plans. For facilities with emerging compliance programs, this supplemental CPG, read in conjunction with the 2000 Nursing Facility CPG, should facilitate discussions among facility leadership regarding the inclusion of specific compliance components and risk areas.

In drafting this supplemental CPG, we considered, among other things, public comments; relevant OIG and Centers for Medicare & Medicaid Services (CMS) statutory and regulatory authorities (including CMS's regulations governing long-term care facilities at 42 CFR part 483; CMS transmittals, program memoranda, and other guidance; and the Federal fraud and abuse statutes, together with the anti-kickback safe

[1] Copies of the CPGs are available on our Web site at *http://www.oig.hhs.gov/fraud/complianceguidance.html.*

[2] *See* 65 FR 14289 (March 16, 2000), ''Publication of the OIG Compliance Program Guidance for Nursing Facilities'' (2000 Nursing Facility CPG), available on our Web site at *http://oig.hhs.gov/authorities/docs/cpgnf.pdf.*

[3] *See* 73 FR 4248 (January 24, 2008), ''Solicitation of Information and Recommendations for Revising the Compliance Program Guidance for Nursing Facilities,'' available on our Web site at *http://oig.hhs.gov/authorities/docs/08/CPG_Nursing_Facility_Solicitation.pdf.*

[4] *See* 73 FR 20680 (April 16, 2008), ''Draft OIG Supplemental Compliance Program Guidance for Nursing Facilities,'' available on our Web site at *http://oig.hhs.gov/fraud/docs/complianceguidance/NurseCPGIIFR.pdf.*

[5] For purposes of convenience in this guidance, the term ''nursing facility'' or ''facility'' includes a skilled nursing facility (SNF) and a nursing facility (NF) that meet the requirements of sections 1819 and 1919 of the Social Security Act (Act) (42 U.S.C. 1395i–3, 1396r), respectively, as well as entities that own or operate such facilities. Where appropriate, we distinguish SNFs from NFs. While long-term care providers other than SNFs or NFs, such as assisted living facilities, should find this CPG useful, we recognize that they may be subject to different laws, rules, and regulations and, accordingly, may have different or additional risk areas and may need to adopt different compliance strategies. We encourage all long-term care providers to establish and maintain effective compliance programs.

[6] *See* 2000 Nursing Facility CPG, *supra* note 2.

harbor regulations and preambles); other OIG guidance (such as OIG advisory opinions, special fraud alerts, bulletins, and other public documents); experience gained from investigations conducted by OIG's Office of Investigations, the Department of Justice (DOJ), and the State Medicaid Fraud Control Units; and relevant reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections. We also consulted with CMS, DOJ, and nursing facility resident advocates.

This supplemental CPG responds to developments in the nursing facility industry, including significant changes in the way nursing facilities deliver, and receive reimbursement for, health care services, evolving business practices, and changes in the Federal enforcement environment. Moreover, this supplemental CPG reflects OIG's continued focus on quality of care in nursing facilities. Together with our law enforcement partners, we have used, with increasing frequency, Federal civil fraud remedies to address cases involving poor quality of care, including troubling failure of care on a systemic level in some organizations. To promote compliance and prevent fraud and abuse, OIG is supplementing the 2000 Nursing Facility CPG with specific risk areas related to quality of care, claims submissions, the Federal anti-kickback statute, and other emerging areas.

A. Benefits of a Compliance Program

Nursing facilities are vital to the health and welfare of millions of Americans. OIG recognizes that most facilities and the people who work in them strive daily to provide high quality, compassionate, cost-effective care to residents. A successful compliance program addresses the public and private sectors' common goals of reducing fraud and abuse, enhancing health care providers' operations, improving the quality of health care services, and reducing their overall cost. Meeting these goals benefits the nursing facility industry, the Government, and residents alike. Compliance programs help nursing facilities fulfill their legal duty to provide quality care; to refrain from submitting false or inaccurate claims or cost information to the Federal health care programs; and to avoid engaging in other illegal practices.

A nursing facility may gain important additional benefits by voluntarily implementing a compliance program, including:

- Demonstrating the nursing facility's commitment to honest and responsible corporate conduct;
- Increasing the likelihood of preventing unlawful and unethical behavior or identifying and correcting such behavior at an early stage;
- Encouraging employees and others to report potential problems, which permits appropriate internal inquiry and corrective action and reduces the risk of False Claims Act lawsuits, and administrative sanctions (*e.g.*, penalties, assessments, and exclusion), as well as State actions;
- Minimizing financial loss to the Government and taxpayers, as well as corresponding financial loss to the nursing facility;
- Enhancing resident satisfaction and safety through the delivery of improved quality of care; and
- Improving the nursing facility's reputation for integrity and quality, increasing its market competitiveness and reputation in the community.

OIG recognizes that implementation of a compliance program may not entirely eliminate improper or unethical conduct from nursing facility operations. However, an effective compliance program demonstrates a nursing facility's good faith effort to comply with applicable statutes, regulations, and other Federal health care program requirements, and may significantly reduce the risk of unlawful conduct and corresponding sanctions.

B. Application of Compliance Program Guidance

Given the diversity of the nursing facility industry, there is no single ''best'' nursing facility compliance program. OIG recognizes the complexities of the nursing facility industry and the differences among facilities. Some nursing facilities are small and may have limited resources to devote to compliance measures; others are affiliated with well-established, large, multi-facility organizations with a widely dispersed work force and significant resources to devote to compliance.

Accordingly, OIG does not intend this supplemental CPG to be a ''one-size-fits-all'' guidance. OIG strongly encourages nursing facilities to identify and focus their compliance efforts on those areas of potential concern or risk that are most relevant to their organizations. A nursing facility should tailor its compliance measures to address identified risk areas and to fit the unique environment of the facility (including its structure, operations, resources, the needs of its resident population, and prior enforcement experience). In short, OIG recommends that each nursing facility adapt the objectives and principles underlying this guidance to its own particular circumstances.

In section II below, for contextual purposes, we provide a brief overview of the reimbursement system. In section III, entitled ''Fraud and Abuse Risk Areas,'' we present several fraud and abuse risk areas that are particularly relevant to the nursing facility industry. Each nursing facility should carefully examine these risk areas and identify those that potentially affect it. Next, in section IV, ''Other Compliance Considerations,'' we offer recommendations for establishing an ethical culture and for assessing and improving an existing compliance program. Finally, in section V, ''Self-Reporting,'' we set forth the actions nursing facilities should take if they discover credible evidence of misconduct.

II. Reimbursement Overview

We begin with a brief overview of Medicare and Medicaid reimbursement for nursing facilities as context for the subsequent risk areas section. This overview is intended to be a summary only. It does not establish or interpret any program rules or regulations. Nursing facilities are advised to consult the relevant program's payment, coverage, and participation rules, regulations, and guidance, which change over time. Any questions regarding payment, coverage, or participation in the Medicare or Medicaid programs should be directed to the relevant contractor, carrier, CMS office, or State Medicaid agency.

A. Medicare

Medicare reimbursement to SNFs and NFs depends on several factors, including the character of the facility, the beneficiary's circumstances, and the type of items and services provided. Generally speaking, SNFs are Medicare-certified facilities that provide extended skilled nursing or rehabilitative care under Medicare Part A. They are typically reimbursed under Part A for the costs of most items and services, including room, board, and ancillary items and services. In some circumstances (discussed further below), SNFs may receive payment under Medicare Part B. Facilities that are not SNFs are not reimbursed under Part A. They may be reimbursed for some items and services under Part B.

Medicare pays SNFs under a prospective payment system (PPS) for beneficiaries covered by the Part A extended care benefit.[7] Covered

[7] Section 1888(e) of the Act (42 U.S.C. 1395yy(e)) (noting the PPS rate applied to services provided on

beneficiaries are those who require skilled nursing or rehabilitation services and receive the services from a Medicare-certified SNF after a qualifying hospital stay of at least 3 days.[8] The PPS rate is a fixed, per diem rate.[9] The maximum benefit is 100 days per ''spell of illness.'' [10]

CMS adjusts the PPS per diem rate per resident to ensure that the level of payment made for a particular resident reflects the resource intensity that would typically be associated with that resident's clinical condition.[11] This methodology, referred to as the Resource Utilization Group (RUG) classification system, currently in version RUG-III, uses beneficiary assessment data extrapolated from the Minimum Data Set (MDS) to assign beneficiaries to one of the RUG-III groups.[12] The MDS is composed of data variables for each resident, including diagnoses, treatments, and an evaluation of the resident's functional status, which are collected via a Resident Assessment Instrument (RAI).[13] Such assessments are conducted at established intervals throughout a resident's stay. The resident's RUG assignment and payment rate are then adjusted accordingly for each interval.[14]

The PPS payments cover virtually all of the SNF's costs for furnishing services to Medicare beneficiaries covered under Part A. Under the ''consolidated billing'' rules, SNFs bill Medicare for most of the services provided to Medicare beneficiaries in SNF stays covered under Part A, including items and services that outside practitioners and suppliers provide under arrangement with the SNF.[15] The SNF is responsible for paying the outside practitioners and suppliers for these services.[16] Services covered by this consolidated billing requirement include, by way of example, physical therapy, occupational therapy, and speech therapy services; certain non-self-administered drugs and supplies furnished ''incident to'' a physician's services (*e.g.*, ointments, bandages, and oxygen); braces and orthotics; and the technical component of most diagnostic tests.[17] These items and services must be billed to Medicare by the SNF.[18]

The consolidated billing requirement does not apply to a small number of excluded services, such as physician professional fees and certain ambulance services.[19] These excluded services are separately billable to Part B by the individual or entity furnishing the service. For example, professional services furnished personally by a physician to a Part A SNF resident are excluded from consolidated billing and are billed by the physician to the Part B carrier.[20]

Some Medicare beneficiaries reside in a Medicare-certified SNF, but are not eligible for Part A extended care benefits (*e.g.*, a beneficiary who did not have a qualifying hospital stay of at least 3 days or a beneficiary who has exhausted his or her Part A benefit). These beneficiaries—sometimes described as being in ''non-covered Part A stays''—may still be eligible for Part B coverage of certain individual services. Consolidated billing would not apply to such individual services, with the exception of therapy services.[21] Physical therapy, occupational therapy, and speech language pathology services furnished to SNF residents are always subject to consolidated billing.[22] Claims for therapy services furnished during a non-covered Part A stay must be submitted to Medicare by the SNF itself.[23] Thus, according to CMS guidance, the SNF is reimbursed under the Medicare fee schedule for the therapy services, and is responsible for reimbursing the therapy provider.[24]

When a beneficiary resides in a nursing facility (or part thereof) that is not certified as an SNF by Medicare, the beneficiary is not considered an SNF resident for Medicare billing purposes.[25] Accordingly, ancillary services, including therapy services, are not subject to consolidated billing.[26] Either the supplier of the ancillary service or the facility may bill the Medicare carrier for the Part B items and services directly.[27] In these circumstances, it is the joint responsibility of the facility and the supplier to ensure that only one of them bills Medicare.

Part B coverage for durable medical equipment (DME) presents special circumstances because the benefit extends only to items furnished for use in a patient's home.[28] DME furnished for use in an SNF or in certain other facilities providing skilled care is not covered by Part B. Instead, such DME is covered by the Part A PPS payment or applicable inpatient payment.[29] In some cases, NFs that are not SNFs can be considered a ''home'' for purposes of DME coverage under Part B.[30]

B. Medicaid

Medicaid provides another means for nursing facility residents to pay for skilled nursing care, as well as room and board in a nursing facility certified by the Government to provide services to Medicaid beneficiaries. Medicaid is a State and Federal program that covers certain groups of low-income and medically needy people. Medicaid also helps residents dually eligible for Medicare and Medicaid pay their Medicare premiums and cost-sharing amounts. Because Medicaid eligibility criteria, coverage limitations, and reimbursement rates are established at the State level, there is significant variation across the nation. Many States, however, pay nursing facilities a flat daily rate that covers room, board, and routine care for Medicaid beneficiaries.

III. Fraud and Abuse Risk Areas

This section should assist nursing facilities in their efforts to identify operational areas that present potential liability risks under several key Federal fraud and abuse statutes and regulations. This section focuses on areas that are currently of concern to the enforcement community. It is not intended to address all potential risk areas for nursing facilities. Identifying a particular practice or activity in this section is not intended to imply that the practice or activity is necessarily illegal

or after July 1, 1998). *See also* CMS, ''Consolidated Billing,'' available on CMS's Web site at *http://www.cms.hhs.gov/SNFPPS/05_ConsolidatedBilling.asp.*

[8] Sections 1812(a)(2) and 1861(i) of the Act (42 U.S.C. 1395d(a)(2), 1395x(i)).

[9] Section 1888(e) of the Act (42 U.S.C. 1395yy(e)).

[10] Section 1812(a)(2)(A) of the Act (42 U.S.C. 1395d(a)(2)(A)).

[11] Section 1888(e)(4)(G)(i) of the Act (42 U.S.C. 1395yy(e)(4)(G)(i)).

[12] *Id.*

[13] Sections 1819(b)(3) and 1919(b)(3) of the Act (42 U.S.C. 1395i–3(b)(3), 1396r(b)(3)), and their implementing regulation, 42 CFR 483.20, require nursing facilities participating in the Medicare or Medicaid programs to use a standardized RAI to assess each nursing facility resident's strengths and needs.

[14] *See id.*

[15] Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (42 U.S.C. 1395u, 1395aa); Section 1888(e) of the Act (42 U.S.C. 1395yy(e)) (noting the PPS rate applied to services provided on or after July 1, 1998). *See also* Consolidated Billing, *supra* note 7.

[16] *See id.*

[17] Section 1888(e) of the Act (42 U.S.C. 1395yy); Consolidated Billing, *supra* note *7.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Section 1888(e)(2)(A) of the Act (42 U.S.C. 1395yy(e)(2)(A)); CMS, ''Skilled Nursing Facilities (SNF) Consolidated Billing (CB) as It Relates to Therapy Services,'' MLN Matters Number: SE0518 (MLN Matters SE0518), available on CMS's Web site at *http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0518.pdf.*

[22] *Id.*

[23] MLN Matters SE0518, *supra* note 21.

[24] Id.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] Section 1861(n) of the Act (42 U.S.C. 1395x(n)).

[29] Section 1861(h)(5) of the Act (42 U.S.C. 1395x(h)(5)).

[30] Section 1861(n) of the Act (42 U.S.C. 1395x(n)).

in all circumstances or that it may not have a valid or lawful purpose. This section addresses the following areas of significant concern for nursing facilities: Quality of care, submission of accurate claims, Federal anti-kickback statute, other risk areas, and Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules.

This guidance does not create any new law or legal obligations, and the discussions in this guidance are not intended to present detailed or comprehensive summaries of lawful or unlawful activity. This guidance is not intended as a substitute for consultation with CMS, a facility's fiscal intermediary or Program Safeguard Contractor, a State Medicaid agency, or other relevant State agencies with respect to the application and interpretation of payment, coverage, licensure, or other provisions that are subject to change. Rather, this guidance should be used as a starting point for a nursing facility's legal review of its particular practices and for development or refinement of policies and procedures to reduce or eliminate potential risk.

A. Quality of Care

By 2030, the number of older Americans is estimated to rise to 71 million,[31] making the aging of the U.S. population ''one of the major public health challenges we face in the 21st century.'' [32] In addressing this challenge, a national focus on the quality of health care is emerging.

In cases that involve failure of care on a systemic and widespread basis, the nursing facility may be liable for submitting false claims for reimbursement to the Government under the Federal False Claims Act, the Civil Monetary Penalties Law (CMPL), or other authorities that address false and fraudulent claims or statements made to the Government.[33] Thus, compliance with applicable quality of care standards and regulations is essential for the lawful behavior and success of nursing facilities.

Nursing facilities that fail to make quality a priority, and consequently fail to deliver quality health care, risk becoming the target of governmental investigations. Highlighted below are common risk areas associated with the delivery of quality health care to nursing facility residents that frequently arise in enforcement cases. These include sufficient staffing, comprehensive care plans, medication management, appropriate use of psychotropic medications, and resident safety. This list is not exhaustive. Moreover, nursing facilities should recognize that these issues are often inter-related. Nursing facilities that attempt to address one issue will often find that they must address other areas as well. The risk areas identified in sections III.B. (Submission of Accurate Claims), III.C. (Anti-Kickback), and III.D. (Other Risk Areas) below are also intertwined with quality of care risk areas and should be considered as well.

As a starting point, nursing facilities should familiarize themselves with 42 CFR part 483 (part 483), which sets forth the principal requirements for nursing facility participation in the Medicare and Medicaid programs. It is essential that key members of the organization understand these requirements and support their facility's commitment to compliance with these regulations. Targeted training for care providers, managers, administrative staff, officers, and directors on the requirements of part 483 will help nursing facilities ensure that they are fulfilling their obligation to provide quality health care.[34]

1. Sufficient Staffing

OIG is aware of facilities that have systematically failed to provide staff in sufficient numbers and with appropriate clinical expertise to serve their residents. Although most facilities strive to provide sufficient staff, nursing facilities must be mindful that Federal law requires sufficient staffing necessary to attain or maintain the highest practicable physical, mental, and psychosocial well-being of residents.[35] Thus, staffing numbers and staff competency are critical.

The relationship between staff ratios, staff competency, and quality of care is complex.[36] No single staffing model will suit every facility. A staffing model that works in a nursing facility today may not meet the facility's needs in the future. Nursing facilities, therefore, are strongly encouraged to assess their staffing patterns regularly to evaluate whether they have sufficient staff members who are competent to care for the unique acuity levels of their residents.

Important considerations for assessing staffing models include, among others, resident case-mix, staff skill levels, staff-to-resident ratios, staff turnover,[37] staffing schedules, disciplinary records, payroll records, timesheets, and adverse

---

[31] Centers for Disease Control and Prevention (CDC), ''The State of Aging and Health in America 2007,'' available on CDC's Web site at *http://www.cdc.gov/aging/pdf/saha_2007.pdf*.

[32] *Id.* (quoting Julie Louise Gerberding, M.D., MPH, Director, CDC, U.S. Department of Health and Human Services).

[33] ''Listening Session: Abuse of Our Elders: How We Can Stop It: Hearing Before the Senate Special Committee on Aging,'' 110th Congress (2007) (testimony of Gregory Demske, Assistant Inspector General for Legal Affairs, Office of Inspector General, U.S. Department of Health and Human Services), available at *http://aging.senate.gov/events/hr178gd.pdf*; *see also* 18 U.S.C. 287 (concerning false, fictitious, or fraudulent claims); 18 U.S.C. 1001 (concerning statements or entries generally); 18 U.S.C. 1035 (concerning false statements relating to health care matters); 18 U.S.C. 1347 (concerning health care fraud); 18 U.S.C. 1516 (concerning obstruction of a Federal audit); the Federal False Claims Act (31 U.S.C. 3729–3733); section 1128A of the Act (42 U.S.C. 1320a–7a) (concerning civil monetary penalties); section 1128B(c) of the Act (42 U.S.C. 1320a–7b(c)) (concerning false statements or representations with respect to condition or operation of institutions). In addition to the Federal criminal, civil, and administrative liability for false claims and kickback violations outlined in this CPG, nursing facilities also face exposure under State laws, including criminal, civil, and administrative sanctions.

[34] The requirement to deliver quality health care is a continuing obligation for nursing facilities. As regulations change, so too should the training. Therefore, this recommendation envisions more than an initial employee ''orientation'' training on the nursing facility's obligations to provide quality health care. CMS has multiple resources available to assist nursing facilities in developing training programs. See CMS, ''Sharing Innovations in Quality, Resources for Long Term Care,'' available on CMS's Web site at *http://siq.air.org/default.aspx*; CMS, ''Skilled Nursing Facilities/Long-Term Care Open Door Forum,'' available on CMS's Web site at *http://www.cms.hhs.gov/OpenDoorForums/25_ODF_SNFLTC.asp*; CMS, ''State Operations Manual,'' Pub. No. 100–07, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/IOM/list.asp*; *see also* Medicare Quality Improvement Community, ''MedQIP—Medicare Quality Improvement Community,'' available on CMS's Web site at *http://www.medqic.org*. Nursing facilities may also find it useful to review the CMS Quality Improvement Organizations Statement of Work, available at *http://www.cms.hhs.gov/QualityImprovementOrgs/04_9thsow.asp*. In addition, facilities may wish to stay abreast of emerging best practices, which are often promoted by industry associations.

[35] Sections 1819(b)(4)(A) and 1919(b)(4)(A) of the Act (42 U.S.C. 1395i–3(b)(4)(A), 1396r(b)(4)(A)); 42 CFR 483.30.

[36] For example, State nursing facility staffing standards, which exist for the majority of States, vary in types of regulated staff, the ratios of staff, and the facilities to which the regulations apply. *See* Jane Tilly, *et al.*, ''State Experiences with Minimum Nursing Staff Ratios for Nursing Facilities: Findings from Case Studies of Eight States'' (November 2003) (joint paper by The Urban Institute and the Department), available at *http://aspe.hhs.gov/daltcp/reports/8statees.htm*.

[37] Nursing facilities operate in an environment of high staff turnover where it is difficult to attract, train, and retain an adequate workforce. Turnover among nurse aides, who provide most of the hands-on care in nursing facilities, means that residents are constantly receiving care from new staff who often lack experience and knowledge of individual residents. Furthermore, research correlates staff shortages and insufficient training with substandard care. *See* OIG, OEI Report OEI–01–04–00070, ''Emerging Practices in Nursing Homes,'' March 2005, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-01-04-00070.pdf* (reviewing emerging practices that nursing facility administrators believe reduce their staff turnover).

event reports (e.g., falls or adverse drug events), as well as interviews with staff, residents, and residents' family or legal guardians. Facilities should ensure that the methods used to assess staffing accurately measure actual ''on-the-floor'' staff rather than theoretical ''on-paper'' staff. For example, payroll records that reflect actual hours and days worked may be more useful than prospectively generated staff schedules.

2. Comprehensive Resident Care Plans

Development of comprehensive resident care plans is essential to reducing risk. Prior OIG reports revealed that a significant percentage of resident care plans did not reflect residents' actual care needs.[38] Through its enforcement and compliance monitoring activities, OIG continues to see insufficient care plans and their impact on residents as a risk area for nursing facilities.

Medicare and Medicaid regulations require nursing facilities to develop a comprehensive care plan for each resident that addresses the medical, nursing, and mental and psychosocial needs for each resident and includes reasonable objectives and timetables.[39] Nursing facilities should ensure that care planning includes all disciplines involved in the resident's care.[40] Perfunctory meetings or plans developed without the full clinical team may create less than comprehensive resident-centered care plans. Inadequately prepared plans make it less likely that residents will receive coordinated, multidisciplinary care. Insufficient plans jeopardize residents' well-being and risk the provision of inadequate care, medically unnecessary care services, or medically inappropriate services.

To reduce these risks, nursing facilities should design measures to ensure an interdisciplinary and comprehensive approach to developing care plans. Basic steps, such as appropriately scheduling meetings to accommodate the full interdisciplinary team, completing all clinical assessments before the meeting is convened,[41] opening lines of communication between direct care providers and interdisciplinary team members, involving the resident and the residents' family members or legal guardian,[42] and documenting the length and content of each meeting, may assist facilities with meeting this requirement.

Another risk area related to care plans includes the involvement of attending physicians in resident care. Although specific regulations govern the role and responsibilities of attending physicians,[43] the nursing facility also has a critical role—ensuring that a physician supervises each resident's care.[44] Facilities must also include the attending physician in the development of the resident's care plan.[45] Thus, an effective compliance program would ensure physician involvement in these processes.[46] For example, many facilities schedule meetings to discuss a particular resident's care plan. Facilities may wish to develop policies and procedures to facilitate participation by attending physicians, who often are not physically present at the nursing facility on a daily basis. Facilities may improve communication with physicians by providing advance notice of care planning meetings. Nursing facilities should evaluate, in conjunction with the attending physician, how best to ensure physician participation—whether via consultation and post-meeting debriefing, or telephone or personal attendance at meetings—with a focus on serving the best interests of the resident and complying with applicable regulations.

3. Medication Management

The Act requires nursing facilities to provide ''pharmaceutical services (including procedures that assure accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.'' [47] Nursing facilities should be mindful of potential quality of care problems when adopting and implementing policies and procedures to provide these services. A failure to manage pharmaceutical services properly can seriously jeopardize resident safety and even result in resident deaths.

Nursing facilities can promote compliance by having in place proper medication management processes that advance patient safety, minimize adverse drug interactions, and ensure that irregularities in a resident's drug regimen are promptly discovered and addressed. Nursing facilities should implement policies and procedures for maintaining accurate drug records and tracking medications. Nursing facilities should provide appropriate training on a regular basis to familiarize all staff involved in the pharmaceutical care of residents with proper medication management. To this end, the facility's consultant pharmacist is an important resource. Consultant pharmacists, who specialize in the medication needs specific to older adults or institutionalized individuals, can help facilities ''identify, evaluate, and address medication issues that may affect resident care, medical care, and quality of life.'' [48]

CMS regulations require that nursing facilities employ or obtain the services of a licensed pharmacist to ''provide[] consultation on all aspects of the provision of pharmacy services in the facility * * *.'' [49] The pharmacist must review the drug regimen of each resident at least once a month and

[38] See, *e.g.*, OIG, OEI Report OEI–02–99–00040, ''Nursing Home Resident Assessment Quality of Care,'' January 2001, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-02–99–00040.pdf.*

[39] 42 CFR 483.20(k). An effective compliance program would also monitor discharge and transfer of residents for compliance with Federal and State regulations. *See, e.g.*, 42 CFR 483.12 (detailing transfer and discharge obligations). Because many of the legitimate reasons for transfer or discharge relate to the medical or psychosocial needs of the resident, the care plan team may be in a position to provide recommendations on discharge or transfer of a resident.

[40] 42 CFR 483.20(k)(2)(ii) (requiring an interdisciplinary team, including the physician, a registered nurse with responsibility for the resident, and other disciplines involved in the resident's care).

[41] Nursing facilities with residents with mental illness or mental retardation should ensure that they have the Preadmission Screening and Resident Review (PASRR) screens for their residents. *See* 42 CFR 483.20(m). In addition, for residents who do not require specialized services, facilities should ensure that they are providing the ''services of lesser intensity'' as set forth in CMS regulations. *See* 42 CFR 483.120(c). Care plan meetings can provide nursing facilities with an ideal opportunity to ensure that these obligations are met.

[42] Where possible, residents and their family members or legal guardians should be included in the development of care and treatment plans. Unless the resident has been declared incompetent or otherwise found to be incapacitated under State law, the resident has a right to participate in his or her care planning and treatment. 42 CFR 483.10(d)(3).

[43] *See, e.g.*, 42 CFR 483.40(b), (c), (e).

[44] 42 CFR 483.40(a).

[45] 42 CFR 483.20(k)(2)(ii).

[46] *See* 42 CFR 483.40(a) (obligating a facility to ensure a physician supervises resident care); 42 CFR 483.40(b) (requiring physicians to review the resident's ''total program of care'').

[47] Sections 1819(b)(4)(A)(iii) and 1919(b)(4)(A)(iii) of the Act (42 U.S.C. 1395i–3(b)(4)(A)(iii) and 1396r(b)(4)(A)(iii)). In addition, under 42 CFR 483.60, SNFs and NFs must ''provide routine and emergency drugs and biologicals to [their] residents, or obtain them under an agreement described in [section] 483.75(h) * * *'' Nursing facilities must meet this obligation even if a pharmacy charges a Medicare Part D copayment to a dual eligible beneficiary who cannot afford to pay the copayment. See CMS, ''Part D Questions re: Co-pays for Institutionalized Individuals April 19, 2006,'' Question 2. and Response, in ''Medicare Part D Claims Filing Window Extended to 180 Days,'' Medicare Rx Update: May 9, 2006, available on CMS's Web site at *http://www.cms.hhs.gov/Pharmacy/downloads/update050906.pdf.*

[48] CMS, ''State Operations Manual,'' Pub. No. 100–07, Appendix PP, section 483.60, available on CMS's Web site at *http://cms.hhs.gov/manuals/Downloads/som107ap_pp_guidelines_ltcf.pdf.*

[49] 42 CFR 483.60(b)(1).

report any irregularities discovered in a resident's drug regimen to the attending physician and the director of nursing.[50] These pharmacists are also required to: (1) ''[e]stablish[] a system of records of receipt and disposition of all controlled drugs * * *;'' and (2) ''[d]etermine[] that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.'' [51] As indicated in CMS guidance, ''[t]he facility may provide for this service through any of several methods (in accordance with [S]tate requirements) such as direct employment or contractual agreement with a pharmacist.'' [52] Some of the consultant pharmacists obtained by nursing facilities are employed by long-term care pharmacies that furnish drugs and supplies to nursing facilities.[53] Whatever the arrangement or method used, the nursing facility and consultant pharmacist should work together to achieve proper medication management in the facility.

4. Appropriate Use of Psychotropic Medications

Based on our enforcement and compliance monitoring activities, OIG has identified inappropriate use of psychotropic medications for residents as a risk area in at least two ways—the prohibition against inappropriate use of chemical restraints and the requirement to avoid unnecessary drug usage.

Facilities have affirmative obligations to ensure appropriate use of psychotropic medications. Specifically, nursing facilities must ensure that psychopharmacological practices comport with Federal regulations and generally accepted professional standards.[54] The facility is responsible for the quality of drug therapy provided in the facility. Federal law prohibits facilities from using any medication as a means of chemical restraint for ''purposes of discipline or convenience, and not required to treat the resident's medical symptoms.'' [55] In addition, resident drug regimens must be free from unnecessary drugs.[56] For residents who specifically require antipsychotic medications, CMS regulations also require, unless contraindicated, that residents receive gradual dose reductions and behavioral interventions aimed at reducing medication use.[57]

In light of these requirements, nursing facilities should ensure that there is an adequate indication for the use of the medication and should carefully monitor, document, and review the use of each resident's psychotropic drugs. Working together, the attending physicians, medical director, consultant pharmacist, and other resident care providers play a critical role in achieving these objectives. Compliance measures could include educating care providers regarding appropriate monitoring and documentation practices and auditing drug regimen reviews [58] and resident care plans to determine if they incorporate an assessment of the resident's ''medical, nursing, and mental and psychosocial needs,'' [59] including the need for psychotropic medications for a specific medical condition.[60] The attending physicians, the medical director, the consultant pharmacist, and other care providers should collaborate to analyze the outcomes of care using the results of the drug regimen reviews, progress notes, and monitoring of the resident's behaviors.

5. Resident Safety

Nursing facility residents have a legal right to be free from abuse and neglect.[61] Facilities should take steps to ensure that they are protecting their residents from these risks.[62] Of particular concern is harm caused by staff and fellow residents.[63]

(a) Promoting Resident Safety

Federal regulations mandate that nursing facilities develop and implement policies and procedures to prohibit mistreatment, neglect, and abuse of residents.[64] Facilities must also thoroughly investigate and report incidents to law enforcement, as required by State laws.[65] Although experts continue to debate the most effective systems for enhancing the reporting, investigation, and prosecution of nursing facility resident abuse, an effective compliance program recognizes the value of a demonstrated internal commitment to eliminating resident abuse.[66] An effective compliance program will include policies, procedures, and practices to prevent, investigate, and respond to instances of potential resident abuse, neglect, or mistreatment, including injuries resulting from staff-on-resident abuse and neglect, resident-on-resident abuse, and abuse from unknown causes.

Confidential reporting is a key component of an effective resident safety program. Such a mechanism enables staff, contractors, residents, family members, visitors, and others to report threats, abuse, mistreatment, and other safety concerns confidentially to senior staff empowered to take immediate action. Posters, brochures, and online resources that encourage readers to report suspected safety problems to senior facility staff are commonly used. Another commonly

[50] 42 CFR 483.60(c).

[51] 42 CFR 483.60(b)(2), (3).

[52] CMS, ''State Operations Manual,'' Pub. No. 100–07, Appendix PP, section 483.60, available on CMS's Web site at *http://cms.hhs.gov/manuals/Downloads/som107ap_pp_guidelines_ltcf.pdf*. In cases where the nursing facilities employ or contract directly with pharmacists to provide consultant pharmacist services, the nursing facility should ensure that the pharmacist's compensation is not structured in any manner that reflects the volume or value of drugs prescribed for, or administered to, patients.

[53] Nursing facilities that receive consultant pharmacist services under contract with a long-term care pharmacy should be mindful that the provision or receipt of free services or services at non-fair-market value rates between actual or potential referral sources present a heightened risk of fraud and abuse. For further discussion of the anti-kickback statute and service arrangements, see sections III.C.1. and III.C.2.

[54] *See, e.g.*, 42 CFR 483.20(k)(3) (requiring services that are ''provided or arranged by the facility'' to comport with professional standards of quality); 42 CFR 483.25 (requiring facilities to provide necessary care and services, including the resident's right to be free of unnecessary drugs); 42 CFR 483.75(b) (requiring facilities to provide services in compliance ''with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles * * *'').

[55] 42 CFR 483.13(a).

[56] 42 CFR 483.25(l)(1). An unnecessary drug includes any medication, including psychotropic medications, that is excessive in dose, used excessively in duration, used without adequate monitoring, used without adequate indications for its use, used in the presence of adverse consequences, or any combination thereof. *Id.*

[57] 42 CFR 483.25(l)(2).

[58] 42 CFR 483.60(c).

[59] 42 CFR 483.20(k).

[60] 42 CFR 483.25(l)(2).

[61] Sections 1819 and 1919 of the Act (42 U.S.C. 1351i–3 and 1396r); 42 CFR 483.10; *see also* 42 CFR 483.15 and 483.25.

[62] *See id.*

[63] For an overview of research relating to resident abuse and neglect, see Catherine Hawes, Ph.D., ''Elder Abuse in Residential Long-Term Care Settings: What is Known and What Information is Needed?,'' *in* Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America (National Research Council, 2003); U.S. Government Accountability Office (GAO), GAO Report GAO–02–312, ''Nursing Homes: More Can Be Done to Protect Residents from Abuse,'' March 2002, available on GAO's Web site at *http://www.gao.gov/new.items/d02312.pdf*; Administration on Aging, Elder Abuse Web site, available at *http://www.aoa.gov/eldfam/elder_rights/elder_abuse/elder_abuse.aspx*.

[64] 42 CFR 483.13(c); *see also* 42 CFR 483.13(a).

[65] *Id.*

[66] Under State mandatory reporting statutes, persons such as health care professionals, human service professionals, clergy, law enforcement, and financial professionals may have a legal obligation to make a formal report to law enforcement officials or a central reporting agency if they suspect that a nursing facility resident is being abused or neglected. To ensure compliance with these statutes, nursing facilities should consider training relating to compliance with their relevant States' laws. Nursing facilities can also assist by providing ready access to law enforcement contact information.

used compliance component for reporting violations is a dedicated hotline that allows staff, contractors, residents, family members, visitors, and others with concerns to report suspicions. Regardless of the reporting vehicle, ideally coverage for reporting and addressing resident safety issues would be on a constant basis (*i.e.*, 24 hours per day/7 days per week). Moreover, nursing facilities should make clear to caregivers, facility staff, and residents that the facility is committed to protecting those who make reports from retaliation.

Facilities may also want to consider a program to engage everyone who comes in contact with nursing facility residents—whether health care professionals, administrative and custodial staff, family and friends, visiting therapists, or community members—in the mission of protecting residents. Such a program could include specialized training for everyone who interacts on a regular basis with residents on recognizing warning signs of neglect or abuse and on effective methods to communicate with potentially fearful residents in a way likely to induce candid self-reporting of neglect or abuse.[67]

(b) Resident Interactions

The nursing facility industry, resident advocacy groups, and law enforcement are becoming increasingly concerned about resident abuse committed by fellow residents. Abuse can occur as a result of the failure to properly screen and assess, or the failure of staff to monitor, residents at risk for aggressive behavior. Such failures can jeopardize both the resident with aggressive behaviors and the victimized resident.

Heightened awareness and monitoring for abuse are crucial to eradicating resident-on-resident abuse. Nursing facilities can advance their mission to provide a safe environment for residents through targeted education relating to resident-on-resident abuse (particularly for staff with responsibilities for admission evaluations). Thorough resident assessments, comprehensive care plans, periodic resident assessments, and proper staffing assignments would also assist nursing facilities in their mission to provide a safe environment for residents.

(c) Staff Screening

Nursing facilities cannot employ individuals ''[f]ound guilty of abusing, neglecting, or mistreating residents,'' or individuals with ''a finding entered into [a] State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property.'' [68] Effective recruitment, screening, and training of care providers are essential to ensure a viable workforce. Although no pre-employment background screening can provide nursing facilities with absolute assurance that a job applicant will not commit a crime in the future, nursing facilities must make reasonable efforts to ensure that they have a workforce that will maintain the safety of their residents.

Commonly, nursing facilities screen potential employees against criminal record databases. OIG is aware that there is a ''great diversity in the way States systematically identify, report, and investigate suspected abuse.'' [69] Nonetheless, a comprehensive examination of a prospective employee's criminal record in all States in which the person has worked or resided may provide a greater degree of protection for residents.[70]

Verification of education, licensing, certifications, and training for care providers can also assist nursing facilities in their efforts to ensure they provide patients with qualified and skilled caregivers. Many States have requirements that nursing facilities conduct these checks for all professional care providers, such as therapists, medical directors, and nurses. Federal regulations require a nursing facility to check its State nurse aide registry to ensure that potential hires for nurse aide positions have met competency evaluation requirements or are otherwise exempted from registration requirements.[71] In addition, the facility must also check every State nurse aide registry it ''believes will include information'' on the individual.[72] To ensure compliance with this requirement, facilities should have mechanisms in place to identify which State registries they must examine.

B. Submission of Accurate Claims

Nursing facilities must submit accurate claims to Federal health care programs. Examples of false or fraudulent claims include claims for items not provided or not provided as claimed, claims for services that are not medically necessary, and claims when there has been a failure of care. Submitting a false claim, or causing a false claim to be submitted, to a Federal health care program may subject the individual, the entity, or both to criminal prosecution, civil liability (including treble damages and penalties) under the False Claims Act, and exclusion from participation in Federal health care programs.

Common and longstanding risks associated with claim preparation and submission include duplicate billing, insufficient documentation, and false or fraudulent cost reports. While nursing facilities should continue to be vigilant with respect to these important risk areas, we believe these risk areas are relatively well understood in the industry, and therefore they are not specifically addressed in this section.

As reimbursement systems have evolved, OIG has uncovered other types of fraudulent transactions related to the provision of health care services to residents of nursing facilities reimbursed by Medicare and Medicaid. In this section, we will discuss some of these risk areas. This list is not exhaustive. It is intended to assist facilities in evaluating their own risk areas. In addition, section III.A. above outlines other regulatory requirements that, if not met, may subject nursing facilities to potential liability for submission of false or fraudulent claims.

1. Proper Reporting of Resident Case-Mix by SNFs

We are aware of instances in which SNFs have improperly upcoded resident RUG assignments.[73] Classifying a resident into the correct RUG, through resident assessments, requires accurate and comprehensive reporting about the resident's conditions and needs. Inaccurate reporting of data could result in the misrepresentation of the resident's status, the submission of false claims, and potential enforcement actions. Therefore, we have identified

[67] Facilities could explore partnering with the ombudsmen and other consumer advocates in sponsoring or participating in special training programs designed to prevent abuse. *See* ''Elder Justice: Protecting Seniors from Abuse and Neglect: Hearing Before the Senate Committee on Finance,'' 107th Congress (2002) (testimony of Catherine Hawes, Ph.D., titled ''Elder Abuse in Residential Long-Term Care Facilities: What is Known About the Prevalence, Causes, and Prevention''), available at *http://finance.senate.gov/hearings/testimony/061802chtest.pdf.*

[68] 42 CFR 483.13(c)(1)(ii).

[69] OIG, Audit Report A–12–12–97–0003, ''Safeguarding Long-Term Care Residents,'' September 1998, available on our Web site at *http://oig.hhs.gov/oas/reports/aoa/d9700003.pdf.*

[70] Because there is no one central repository for criminal records, there is a significant limitation to searching the criminal record databases only for the State in which the facility is located. A better practice may be to search databases for all States in which the applicant resided or was employed.

[71] 42 CFR 483.75(e)(5).

[72] 42 CFR 483.75(e)(6).

[73] A 2006 OIG report found that 22 percent of claims were upcoded, representing $542 million in potential overpayments for FY 2002. OIG, OEI Report OEI–02–02–00830, ''A Review of Nursing Facility Resource Utilization Groups,'' February 2006, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-02-02-00830.pdf.*

the assessment, reporting, and evaluation of resident case-mix data as a significant risk area for SNFs.[74]

Because of the critical role resident case-mix data play in resident care planning and reimbursement, training on the collection and use of case-mix data is important. An effective compliance program will include training of responsible staff to ensure that persons collecting the data and those charged with analyzing and responding to the data are knowledgeable about the purpose and utility of the data. Facilities must also ensure that data reported to the Federal Government are accurate. Both internal and external periodic validation of data may prove useful. Moreover, as authorities continue to scrutinize quality-reporting data,[75] nursing facilities are well-advised to review such data regularly to ensure their accuracy and to identify and address potential quality of care issues.[76]

2. Therapy Services

The provision of physical, occupational, and speech therapy services continues to be a risk area for nursing facilities. Potential problems include: (i) Improper utilization of therapy services to inflate the severity of RUG classifications and obtain additional reimbursement; (ii) overutilization of therapy services billed on a fee-for-service basis to Part B under consolidated billing; and (iii) stinting on therapy services provided to patients covered by the Part A PPS payment.[77] These practices may result in the submission of false claims.[78]

In addition, unnecessary therapy services may place frail but otherwise functioning residents at risk for physical injury, such as muscle fatigue and broken bones, and may obscure a resident's true condition, leading to inadequate care plans and inaccurate RUG classifications.[79] Too few therapy services may expose residents to risk of physical injury or decline in condition, resulting in potential failure of care problems.

OIG strongly advises nursing facilities to develop policies, procedures, and measures to ensure that residents are receiving medically appropriate therapy services.[80] Some practices that may be beneficial include: Requirements that therapy contractors provide complete and contemporaneous documentation of each resident's services; regular and periodic reconciliation of the physician's orders and the services actually provided; interviews with the residents and family members to be sure services are delivered; and assessments of the continued medical necessity for services during resident care planning meetings at which the attending physician attends.

3. Screening for Excluded Individuals and Entities

No Federal health care program payment may be made for items or services furnished by an excluded individual or entity.[81] This payment ban applies to all methods of Federal health care program reimbursement. Civil monetary penalties (CMP) may be imposed against any person who arranges or contracts (by employment or otherwise) with an individual or entity for the provision of items or services for which payment may be made under a Federal health care program,[82] if the person knows or should know that the employee or contractor is excluded from participation in a Federal health care program.[83]

To prevent hiring or contracting with an excluded person, OIG strongly advises nursing facilities to screen all prospective owners, officers, directors, employees, contractors,[84] and agents prior to engaging their services against OIG's List of Excluded Individuals/Entities (LEIE) on OIG's Web site,[85] as well as the U.S. General Services Administration's Excluded Parties List System.[86] In addition, facilities should consider implementing a process that requires job applicants to disclose, during the pre-employment process (or, for vendors, during the request for proposal process), whether they are excluded. Facilities should strongly consider periodically screening their current owners, officers, directors, employees, contractors, and agents to ensure that they have not been excluded since the initial screening.

Facilities should also take steps to ensure that they have policies and procedures that require removal of any owner, officer, director, employee, contractor, or agent from responsibility for, or involvement with, a facility's business operations related to the Federal health care programs if the facility has actual notice that such a person is excluded. Facilities may also wish to consider appropriate training for human resources personnel on the effects of exclusion. Exclusion continues to apply to an individual even if he or she changes from one health care profession to another while excluded. That exclusion remains in effect until OIG has reinstated the individual, which is not automatic.[87] A useful tool for the training is OIG's Special Advisory Bulletin, titled ''The Effect of Exclusion From Participation in Federal Health Care Programs.'' [88]

4. Restorative and Personal Care Services

Facilities must ensure that residents receive appropriate restorative and

[74] To the extent a State Medicaid program relies upon RUG classification, or a variation of this system, to calculate its reimbursement rate, nursing facilities, as defined in section 1919 of the Act (42 U.S.C. 1396r), should be aware of this risk area as well.

[75] *See, e.g.*, CMS, ''2007 Action Plan for (Further Improvement of) Nursing Home Quality,'' September 2006, available on CMS's Web site at *http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/2007ActionPlan.pdf.*

[76] In addition to assisting facilities with ensuring that claims data are accurate, monitoring MDS data may assist facilities in recognizing common warning signs of a systemic care problem (*e.g.*, increase in or excessive pressure ulcers or falls).

[77] There may be additional risk areas for outside therapy suppliers.

[78] Additional risks related to the anti-kickback statute are discussed below in section III.C.

[79] *See* 42 CFR 483.20(b) and (k).

[80] *See* OIG, OEI Report OEI–09–99–00563, ''Physical, Occupational, and Speech Therapy for Medicare Nursing Home Patients: Medical Necessity and Quality of Care Based on Treatment Diagnosis,'' August 2001, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-09–99–00563.pdf.*

[81] 42 CFR 1001.1901. Exclusions imposed prior to August 5, 1997, cover Medicare and all State health care programs (including Medicaid), but not other Federal health care programs. *See* The Balanced Budget Act of 1997 (Pub. L. 105–33) (amending section 1128 of the Act (42 U.S.C. 1320a–7) to expand the scope of exclusions imposed by OIG).

[82] Such items or services could include administrative, clerical, and other activities that do not directly involve patient care. *See* section 1128A(a)(6) of the Act (42 U.S.C. 1320a–7a(a)(6)).

[83] *Id.*

[84] A nursing facility that relies upon third-party agencies to provide temporary or contract staffing should consider including provisions in its contracts that require the vendors to screen staff against OIG's List of Excluded Individuals/Entities before determining that they are eligible to work at the nursing facility. Although a nursing facility would not avoid liability for violating Medicare's prohibition on payment for services rendered by the excluded staff person merely by including such a provision, requiring the vendors to screen staff may help a nursing facility avoid engaging the services of excluded persons, and could be taken into account in the event of a Government enforcement action.

[85] Available on our Web site at *http://oig.hhs.gov/fraud/exclusions/listofexcluded.html.*

[86] Available at *http://www.epls.gov/.*

[87] Reinstatement of excluded entities and individuals is not automatic. Those wishing to again participate in the Medicare, Medicaid, and all Federal health care programs must apply for reinstatement and receive authorized notice from OIG that reinstatement has been granted. Obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate eligibility to participate in those programs. There are no provisions for retroactive reinstatement. *See* 42 CFR 1001.1901.

[88] OIG, ''The Effect of Exclusion From Participation in Federal Health Care Programs,'' September 1999, available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/effected.htm.*

personal care services to allow residents to attain and maintain their highest practicable level of functioning.[89] These services include, among others, care to avoid pressure ulcers, active and passive range of motion, ambulation, fall prevention, incontinence management, bathing, dressing, and grooming activities.[90]

OIG is aware of facilities that have billed Federal health care programs for restorative and personal care services despite the fact that the services were not provided or were so wholly deficient that they amounted to no care at all. Federal health care programs do not reimburse for restorative and personal care services under these circumstances. Nursing facilities that fail to provide necessary restorative and personal care services risk billing for services not rendered as claimed, and therefore may be subject to liability under fraud and abuse statutes and regulations.

To avoid this risk, nursing facilities are strongly encouraged to have comprehensive procedures in place to ensure that services are of an appropriate quality and level and that services are in fact delivered to nursing facility residents. To accomplish this, facilities may wish to engage in resident and staff interviews; medical record reviews; [91] consultations with attending physicians, the medical director, and consultant pharmacists; and personal observations of care delivery. Moreover, complete and contemporaneous documentation of services is critical to ensuring that services are rendered.

C. The Federal Anti-Kickback Statute

The Federal anti-kickback statute, section 1128B(b) of the Act,[92] places constraints on business arrangements related directly or indirectly to items or services reimbursable by Federal health care programs, including, but not limited to, Medicare and Medicaid. The anti-kickback statute prohibits the health care industry from engaging in some practices that are common in other business sectors, such as offering or receiving gifts to reward past or potential new referrals.

The anti-kickback statute is a criminal prohibition against remuneration (in any form, whether direct or indirect) made purposefully to induce or reward the referral or generation of Federal health care program business. The anti-kickback statute prohibits offering or paying anything of value for patient referrals. It also prohibits offering or paying of anything of value in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or order of any item or service reimbursable in whole or in part by a Federal health care program. The statute also covers the solicitation or acceptance of remuneration for referrals for, or the generation of, business payable by a Federal health care program. Liability under the anti-kickback statute is determined separately for each party involved. In addition to criminal penalties, violators may be subject to CMPs and exclusion from the Federal health care programs. Nursing facilities should also be aware that compliance with the anti-kickback statute is a condition of payment under Medicare and other Federal health care programs.[93] As such, liability may arise under the False Claims Act if the anti-kickback statute violation results in the submission of a claim for payment under a Federal health care program.

Nursing facilities make and receive referrals of Federal health care program business. Nursing facilities need to ensure that these referrals comply with the anti-kickback statute. Nursing facilities may obtain referrals of Federal health care program beneficiaries from a variety of health care sources, including, for example, physicians and other health care professionals, hospitals and hospital discharge planners, hospices, home health agencies, and other nursing facilities. Physicians, pharmacists, and other health care professionals may generate referrals for items and services reimbursed to the nursing facilities by Federal health care programs. In addition, when furnishing services to residents, nursing facilities often direct or influence referrals to others for items and services reimbursable by Federal health care programs. For example, nursing facilities may refer patients to, or order items or services from, hospices; DME companies; laboratories; diagnostic testing facilities; long-term care pharmacies; hospitals; physicians; other nursing facilities; and physical, occupational, and speech therapists. All of these circumstances call for vigilance under the anti-kickback statute.

Although liability under the anti-kickback statute ultimately turns on a party's intent, it is possible to identify arrangements or practices that may present a significant potential for abuse. For purposes of identifying potential kickback risks under the anti-kickback statute, the following inquiries are useful:

- Does the nursing facility (or its affiliates or representatives) provide anything of value to persons or entities in a position to influence or generate Federal health care program business for the nursing facility (or its affiliates) directly or indirectly?
- Does the nursing facility (or its affiliates or representatives) receive anything of value from persons or entities for which the nursing facility generates Federal health care program business, directly or indirectly?
- Could one purpose of an arrangement be to induce or reward the generation of business payable in whole or in part by a Federal health care program? Importantly, under the anti-kickback statute, neither a legitimate business purpose for an arrangement nor a fair-market value payment will legitimize a payment if there is also an illegal purpose (i.e., inducing Federal health care program business).

Any arrangement for which the answer to any of these inquiries is affirmative implicates the anti-kickback statute and requires careful scrutiny.

Several potentially aggravating considerations are useful in identifying arrangements at greatest risk of prosecution. In particular, in assessing risk, nursing facilities should ask the following questions, among others, about any potentially problematic arrangements or practices they identify:

- Does the arrangement or practice have a potential to interfere with, or skew, clinical decision-making?
- Does the arrangement or practice have a potential to increase costs to Federal health care programs or beneficiaries?
- Does the arrangement or practice have a potential to increase the risk of overutilization or inappropriate utilization?
- Does the arrangement or practice raise patient safety or quality of care concerns?

Nursing facilities should be mindful of these concerns when structuring and reviewing arrangements. An affirmative answer to one or more of these questions is a red flag signaling an arrangement or practice that may be particularly susceptible to fraud and abuse.

Nursing facilities that have identified potentially problematic arrangements or

[89] 42 CFR 483.25 (requiring facilities to provide care and services necessary to ensure a resident's ability to participate in activities of daily living do not diminish unless a clinical condition makes the decline unavoidable).

[90] *Id.*

[91] Indicators to watch for include, but are not limited to, bedsores, falls, unexplained weight loss, and dehydration.

[92] 42 U.S.C. 1320a–7b(b).

[93] *See, e.g.,* CMS, Form 855A, ''Medicare Federal Health Care Provider/Supplier Application,'' Certification Statement at section 15, paragraph A.3., available on CMS's Web site at *http://www.cms.hhs.gov/CMSForms/downloads/CMS855a.pdf.*

practices can take a number of steps to reduce or eliminate the risk of an anti-kickback violation. Most importantly, the anti-kickback statute and the corresponding regulations establish a number of ''safe harbors'' for common business arrangements. The safe harbors protect arrangements from liability under the statute. The following safe harbors are of most relevance to nursing facilities:

- Investment interests safe harbor (42 CFR 1001.952(a)),
- Space rental safe harbor (42 CFR 1001.952(b)),
- Equipment rental safe harbor (42 CFR 1001.952(c)),
- Personal services and management contracts safe harbor (42 CFR 1001.952(d)),
- Discount safe harbor (42 CFR 1001.952(h)),
- Employee safe harbor (42 CFR 1001.952(i)),
- Electronic health records items and services safe harbors (42 CFR 1001.952(y)), and
- Managed care and risk sharing arrangements safe harbors (42 CFR 1001.952(m), (t), and (u)).

To receive protection, an arrangement must fit squarely in a safe harbor. Safe harbor protection requires strict compliance with all applicable conditions set out in the relevant regulation.[94] Compliance with a safe harbor is voluntary. Failure to comply with a safe harbor does not mean an arrangement is illegal per se. Nevertheless, we recommend that nursing facilities structure arrangements to fit in a safe harbor whenever possible.

Nursing facilities should evaluate potentially problematic arrangements with referral sources and referral recipients that do not fit into a safe harbor by reviewing the totality of the facts and circumstances, including the intent of the parties. Depending on the circumstances, some relevant factors include:

- *Nature of the relationship between the parties.* What degree of influence do the parties have, directly or indirectly, on the generation of business for each other?
- *Manner in which participants were selected.* Were parties selected to participate in an arrangement in whole or in part because of their past or anticipated referrals?
- *Manner in which the remuneration is determined.* Does the remuneration take into account, directly or indirectly, the volume or value of business generated? Is the remuneration conditioned in whole or in part on referrals or other business generated between the parties? Is the arrangement itself conditioned, directly or indirectly, on the volume or value of Federal health care program business? Is there any service provided other than referrals?
- *Value of the remuneration.* Is the remuneration fair-market value in an arm's-length transaction for legitimate, reasonable, and necessary services that are actually rendered? Is the nursing facility paying an inflated rate to a potential referral source? Is the nursing facility receiving free or below-market-rate items or services from a provider or supplier? Is compensation tied, directly or indirectly, to Federal health care program reimbursement? Is the determination of fair-market value based upon a reasonable methodology that is uniformly applied and properly documented?
- *Nature of items or services provided.* Are items and services actually needed and rendered, commercially reasonable, and necessary to achieve a legitimate business purpose?
- *Potential Federal program impact.* Does the remuneration have the potential to affect costs to any of the Federal health care programs or their beneficiaries? Could the remuneration lead to overutilization or inappropriate utilization?
- *Potential conflicts of interest.* Would acceptance of the remuneration diminish, or appear to diminish, the objectivity of professional judgment? Are there patient safety or quality-of-care concerns? If the remuneration relates to the dissemination of information, is the information complete, accurate, and not misleading?
- *Manner in which the arrangement is documented.* Is the arrangement properly and fully documented in writing? Are the nursing facilities and outside providers and suppliers documenting the items and services they provide? Is the nursing facility monitoring items and services provided by outside providers and suppliers? Are arrangements actually conducted according to the terms of the written agreements? It is the substance, not the written form, of an arrangement that is determinative.

These inquiries—and appropriate follow-up inquiries—can help nursing facilities identify, address, and avoid problematic arrangements.

Available OIG guidance on the anti-kickback statute includes OIG Special Fraud Alerts and advisory bulletins. OIG also issues advisory opinions to specific parties about their particular business arrangements.[95] A nursing facility concerned about an existing or proposed arrangement may request a binding OIG advisory opinion regarding whether the arrangement violates the Federal anti-kickback statute or other OIG fraud and abuse authorities. Procedures for requesting an advisory opinion are set out at 42 CFR part 1008. The safe harbor regulations (and accompanying **Federal Register** preambles), fraud alerts and bulletins, advisory opinions (and instructions for obtaining them, including a list of frequently asked questions), and other guidance are available on our Web site at *http://oig.hhs.gov.*

The following discussion highlights several known areas of potential risk under the anti-kickback statute. The propriety of any particular arrangement can only be determined after a detailed examination of the attendant facts and circumstances. The identification of a given practice or activity as ''suspect'' or as an area of risk does not mean it is necessarily illegal or unlawful, or that it cannot be properly structured to fit in a safe harbor. It also does not mean that the practice or activity is not beneficial from a clinical, cost, or other perspective. Instead, the areas identified below are practices that have a potential for abuse and that should receive close scrutiny from nursing facilities.

1. Free Goods and Services

OIG has a longstanding concern about the provision of free goods or services to an existing or potential referral source. There is a substantial risk that free goods or services may be used as a vehicle to disguise or confer an unlawful payment for referrals of Federal health care program business. For example, OIG gave the following warning about free computers in the preamble to the 1991 safe harbor regulations:

> A related issue is the practice of giving away free computers. In some cases the computer can only be used as part of a particular service that is being provided, for example, printing out the results of laboratory tests. In this situation, it appears

[94] Parties to an arrangement cannot obtain safe harbor protection by entering into a sham contract that complies with the written agreement requirement of a safe harbor and appears, on paper, to meet all of the other safe harbor requirements, but does not reflect the actual arrangement between the parties. In other words, in assessing compliance with a safe harbor, the question is not whether the terms in a written contract satisfy all of the safe harbor requirements, but whether the actual arrangement satisfies the requirements.

[95] While informative for guidance purposes, an OIG advisory opinion is binding only with respect to the particular party or parties that requested the opinion. The analyses and conclusions set forth in OIG advisory opinions are fact-specific. Accordingly, different facts may lead to different results.

that the computer has no independent value apart from the service being provided and that the purpose of the free computer is not to induce an act that is prohibited by the statute * * *. In contrast, sometimes the computer that is given away is a regular personal computer, which the physician is free to use for a variety of purposes in addition to receiving test results. In that situation the computer has a definite value to the physician, and, depending on the circumstances, may well constitute an illegal inducement.[96]

Similarly, with respect to free services, OIG observed in a Special Fraud Alert that:

> While the mere placement of a laboratory employee in the physician's office would not necessarily serve as an inducement prohibited by the anti-kickback statute, the statute is implicated when the phlebotomist performs additional tasks that are normally the responsibility of the physician's office staff. These tasks can include taking vital signs or other nursing functions, testing for the physician's office laboratory, or performing clerical services. Where the phlebotomist performs clerical or medical functions not directly related to the collection or processing of laboratory specimens, a strong inference arises that he or she is providing a benefit in return for the physician's referrals to the laboratory. In such a case, the physician, the phlebotomist, and the laboratory may have exposure under the anti-kickback statute. This analysis applies equally to the placement of phlebotomists in other health care settings, including nursing homes, clinics and hospitals.[97]

The principles illustrated by each of the above examples also apply in the nursing facility context. The provision of goods or services that have independent value to the recipient or that the recipient would otherwise have to provide at its own expense confers a benefit on the recipient. This benefit may constitute prohibited remuneration under the anti-kickback statute, if one purpose of the remuneration is to generate referrals of Federal health care program business.

Examples of suspect free goods and services arrangements that warrant careful scrutiny include:

- Pharmaceutical consultant services, medication management, or supplies offered by a pharmacy;
- Infection control, chart review, or other services offered by laboratories or other suppliers;
- Equipment, computers, or software applications[98] that have independent value to the nursing facility;
- DME or supplies offered by DME suppliers for patients covered by the SNF Part A benefit;
- A laboratory phlebotomist providing administrative services;
- A hospice nurse providing nursing services for non-hospice patients; and
- A registered nurse provided by a hospital.

Nursing facilities should be mindful that, depending on the circumstances, these and similar arrangements may subject the parties to liability under the anti-kickback statute, if the requisite intent is present.

2. Services Contracts

(a) Non-Physician Services

Often kickbacks are disguised as otherwise legitimate payments or are hidden in business arrangements that appear, on their face, to be appropriate. In addition to the provision of free goods and services, the provision or receipt of goods or services at non-fair-market value rates presents a heightened risk of fraud and abuse. Nursing facilities often arrange for certain services and supplies to be provided to residents by outside suppliers and providers, such as pharmacies; clinical laboratories; DME suppliers; ambulance providers; parenteral and enteral nutrition (PEN) suppliers; diagnostic testing facilities; rehabilitation companies; and physical, occupational, and speech therapists. These relationships need to be scrutinized closely under the anti-kickback statute to ensure that they are not vehicles to disguise kickbacks from the suppliers and providers to the nursing facility to influence the nursing facility to refer Federal health care program business to the suppliers and providers.

To minimize their risk, nursing facilities should periodically review contractor and staff arrangements to ensure that: (i) There is a legitimate need for the services or supplies; (ii) the services or supplies are actually provided and adequately documented; (iii) the compensation is at fair-market value in an arm's-length transaction; and (iv) the arrangement is not related in any manner to the volume or value of Federal health care program business. Nursing facilities are well-advised to have all of the preceding facts documented contemporaneously and prior to payment to the provider of the supplies or services. To eliminate their risk, nursing facilities should structure services arrangements to comply with the personal services and management contracts safe harbor[99] whenever possible.

Nursing facilities should also adopt and implement policies and procedures to minimize the risk of improper pharmaceutical decisions tainted by kickbacks. For example, depending on the circumstances, a consultant pharmacist employed by a long-term care pharmacy may face a potential conflict of interest when making recommendations about a resident's drug regimen if a drug that is not on the pharmacy's formulary is prescribed.[100] Nursing facilities should establish policies that make clear that all prescribing decisions must be based on the best interests of the individual patient.[101] Drug switches may only be made upon authorization of the attending physician, medical director, or other licensed prescriber (except in certain limited circumstances where permitted by State law, e.g., permissible generic substitutions or changes allowed under a collaborative practice agreement between a physician and a pharmacist). Nursing facilities should consider implementing policies and procedures to monitor drug records for patterns that may indicate inappropriate drug switching or steering. All staff and practitioners involved in prescribing, administering, and managing pharmaceuticals should be educated on the legal prohibition against accepting anything of value from a pharmacy or pharmaceutical manufacturer to influence the choice of drug or to switch a resident from one drug to another.

(b) Physician Services

Nursing facilities also arrange for physicians to provide medical director, quality assurance, and other services. Such physician oversight and

[96] 56 FR 35952, 35978 (July 29, 1991), ''Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions,'' available on our Web site at *http://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm.*

[97] 59 FR 65372, 65377 (December 19, 1994), ''Publication of OIG Special Fraud Alerts,'' available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html.*

[98] There is a safe harbor for electronic health records software arrangements at 42 CFR 1001.952(y), which can be used by nursing facilities. The safe harbor is available if all of its conditions are satisfied. The safe harbor does not protect free hardware or equipment.

[99] 42 CFR 1001.952(d).

[100] Long-term care pharmacies, many of which employ consultant pharmacists, have purchasing agreements with pharmaceutical manufacturers and contracts with health plans. In addition, long-term care pharmacies typically employ their own formularies for some residents. As a result of these arrangements and contracts, long-term care pharmacies may prefer that nursing facility customers and residents use some drugs over others.

[101] In all cases, prescribing decisions should be based upon the unique needs of the patients being served in that facility, established clinical guidelines, and evidence of cost effectiveness. The determination of clinical efficacy and appropriateness of the particular drugs should precede, and be paramount to, the consideration of costs.

involvement at the nursing facility contributes to the quality of care furnished to the residents. These physicians, however, may also be in a position to generate Federal health care program business for the nursing facility. For instance, these physicians may refer patients for admission. They may order items and services that result in an increased RUG or that are billable separately by the nursing facility. Physician arrangements need to be closely monitored to ensure that they are not vehicles to pay physicians for referrals. As with other services contracts, nursing facilities should periodically review these arrangements to ensure that: (i) There is a legitimate need for the services; (ii) the services are provided; (iii) the compensation is at fair-market value in an arm's-length transaction; and (iv) the arrangement is not related in any manner to the volume or value of Federal health care program business. In addition, prudent nursing facilities will maintain contemporaneous documentation of the arrangement, including, for example, the compensation terms, time logs or other accounts of services rendered, and the basis for determining compensation. Prudent facilities will also take steps to ensure that they have not engaged more medical directors or other physicians than necessary for legitimate business purposes. They will also ensure that compensation is commensurate with the skill level and experience reasonably necessary to perform the contracted services. To eliminate their risk, nursing facilities should structure services arrangements to comply with the personal services and management contracts safe harbor [102] whenever possible.

3. Discounts

(a) Price Reductions

Public policy favors open and legitimate price competition in health care. Thus, the anti-kickback statute contains an exception for discounts offered to customers that submit claims to the Federal health care programs, if the discounts are properly disclosed and accurately reported. However, to qualify for the exception, the discount must be in the form of a reduction in the price of the good or service based on an arm's-length transaction. In other words, the exception covers only reductions in the product's or service's price.

In conducting business, nursing facilities routinely purchase items and services reimbursable by Federal health care programs. Therefore, they should familiarize themselves with the discount safe harbor at 42 CFR 1001.952(h). In particular, nursing facilities should ensure that all discounts—including any rebates—are properly disclosed and accurately reflected on their cost reports (and in any claims as appropriate) filed with a Federal program. In addition, some nursing facilities purchase products through group purchasing organizations (GPO) to which they belong. Any discounts received from vendors who sell their products under a GPO contract should be properly disclosed and accurately reported on the nursing facility's cost reports. Although there is a safe harbor for administrative fees paid by a vendor to a GPO,[103] that safe harbor does not protect discounts provided by a vendor to purchasers of products.

(b) Swapping

Nursing facilities often obtain discounts from suppliers and providers on items and services that the nursing facilities purchase for their own account. In negotiating arrangements with suppliers and providers, a nursing facility should be careful that there is no link or connection, explicit or implicit, between discounts offered or solicited for business that the nursing facility pays for and the nursing facility's referral of business billable by the supplier or provider directly to Medicare or another Federal health care program. For example, nursing facilities should not engage in ''swapping'' arrangements by accepting a low price from a supplier or provider on an item or service covered by the nursing facility's Part A per diem payment in exchange for the nursing facility referring to the supplier or provider other Federal health care program business, such as Part B business excluded from consolidated billing, that the supplier or provider can bill directly to a Federal health care program. Such ''swapping'' arrangements implicate the anti-kickback statute and are not protected by the discount safe harbor. Nursing facility arrangements with clinical laboratories, DME suppliers, and ambulance providers are some examples of arrangements that may be prone to ''swapping'' problems.

As we have previously explained in other guidance,[104] the size of a discount is not determinative of an anti-kickback statute violation. Rather, the appropriate question to ask is whether the discount is tied or linked, directly or indirectly, to referrals of other Federal health care program business. When evaluating whether an improper connection exists between a discount offered to a nursing facility and referrals of Federal health care program business billed by a supplier or provider, suspect arrangements include below-cost arrangements or arrangements at prices lower than the prices offered by the supplier or provider to other customers with similar volumes of business, but without Federal health care program referrals. Other suspect practices include, but are not limited to, discounts that are coupled with exclusive provider agreements and discounts or other pricing schemes made in conjunction with explicit or implicit agreements to refer other facility business. In sum, if any direct or indirect link exists between a price offered by a supplier or provider to a nursing facility for items or services that the nursing facility pays for out-of-pocket and referrals of Federal business for which the supplier or provider can bill a Federal health care program, the anti-kickback statute is implicated.

4. Hospices

Hospice services for terminally ill patients are typically provided in the patients' homes. In some cases, however, a nursing facility is the patient's home. In such cases, nursing facilities often arrange for the provision of hospice services in the nursing facility if the resident meets the hospice eligibility criteria and elects the hospice benefit. These arrangements pose several fraud and abuse risks. For example, to induce referrals, a hospice may offer a nursing facility remuneration in the form of free nursing services for non-hospice patients; additional room and board payments; [105] or inflated payments for providing hospice services to the

[102] 42 CFR 1001.952(d).

[103] 42 CFR 1001.952(j).

[104] *See, e.g.*, OIG's September 22, 1999, letter regarding ''Discount Arrangements Between Clinical Laboratories and SNFs'' (referencing OIG Advisory Opinion No. 99–2 issued February 26, 1999), available on our Web site at *http://oig.hhs.gov/fraud/docs/safeharborregulations/rs.htm*; 56 FR 35952 at the preamble (July 29, 1991), ''Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions,'' available on our Web site at *http://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm*.

[105] The Medicare reimbursement rate for routine hospice services provided in a nursing facility does not include room and board expenses, so payment for room and board may be the responsibility of the patient. CMS, ''Medicare Benefit Policy Manual,'' Pub. No. 100–02, chapter 9, section 20.3, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/IOM/list.asp*. For Medicaid patients, the State will pay the hospice at least 95 percent of the State's Medicaid daily nursing facility rate, and the hospice is then responsible for paying the nursing facility for the beneficiary's room and board. Section 1902(a)(13)(B) of the Act (42 U.S.C. 1396a(a)(13)(B)).

hospice's patients.[106] Nursing facilities should be mindful that requesting or accepting remuneration from a hospice may subject the nursing facility and the hospice to liability under the anti-kickback statute if the remuneration might influence the nursing facility's decision to do business with the hospice.[107]

Some of the practices that are suspect under the anti-kickback statute include:

- A hospice offering free goods or goods at below-fair-market value to induce a nursing facility to refer patients to the hospice;
- A hospice paying room and board payments to the nursing facility in excess of what the nursing facility would have received directly from Medicaid had the patient not been enrolled in hospice. Any additional payment must represent the fair-market value of additional services actually provided to that patient that are not included in the Medicaid daily rate;
- A hospice paying amounts to the nursing facility for additional services that Medicaid considers to be included in its room and board payment to the hospice;
- A hospice paying above fair-market value for additional services that Medicaid does not consider to be included in its room and board payment to the nursing facility;
- A hospice referring its patients to a nursing facility to induce the nursing facility to refer its patients to the hospice;
- A hospice providing free (or below-fair-market value) care to nursing facility patients, for whom the nursing facility is receiving Medicare payment under the SNF benefit, with the expectation that after the patient exhausts the SNF benefit, the patient will receive hospice services from that hospice; and
- A hospice providing staff at its expense to the nursing facility.

For additional guidance on arrangements with hospices, nursing facilities should review OIG's Special Fraud Alert on Nursing Home Arrangements with Hospices.[108] Whenever possible, nursing facilities should structure their relationships with hospices to fit in a safe harbor, such as the personal services and management contracts safe harbor.[109]

5. Reserved Bed Payments

Sometimes hospitals enter into reserved bed arrangements with nursing facilities to receive guaranteed or priority placement for their discharged patients.[110] Under some reserved bed arrangements, hospitals provide remuneration to nursing facilities to keep certain beds available and open. These arrangements could be problematic under the anti-kickback statute if one purpose of the remuneration is to induce referrals of Federal health care program business from the nursing facility to the hospital.[111] Payments should not be determined in any manner that reflects the volume or value of existing or potential referrals of Federal health care program business from the nursing facility to the hospital. Examples of some reserved bed payments that may give rise to an inference that the arrangement is connected to referrals include: (1) Payments that result in double-dipping by the nursing facility (*e.g.*, sham payments for beds that are actually occupied or for which the facility is otherwise receiving reimbursement); (2) payments for more beds than the hospital legitimately needs; and (3) excessive payments (*e.g.*, payments that exceed the nursing facility's actual costs of holding a bed or the actual revenues a facility reasonably stands to forfeit by holding a bed given the facility's occupancy rate and patient acuity mix). Reserved bed arrangements should be entered into only when there is a bona fide need to have the arrangement in place. Reserved bed arrangements should serve the limited purpose of securing needed beds, not future referrals.

D. Other Risk Areas

1. Physician Self-Referrals

Nursing facilities should familiarize themselves with the physician self-referral law (section 1877 of the Act),[112] commonly known as the ''Stark'' law. The physician self-referral law prohibits entities that furnish ''designated health services'' (DHS) from submitting—and Medicare from paying—claims for DHS if the referral for the DHS comes from a physician with whom the entity has a prohibited financial relationship. This is true even if the prohibited financial relationship is the result of inadvertence or error. Violations can result in refunding of the prohibited payment and, in cases of knowing violations, CMPs, and exclusion from the Federal health care programs. Knowing violations of the physician self-referral law can also form the basis for liability under the False Claims Act.

Nursing facility services, including SNF services covered by the Part A PPS payment, are not DHS for purposes of the physician self-referral law. However, laboratory services, physical therapy services, and occupational therapy services are among the DHS covered by the statute.[113] Nursing facilities that bill Part B for laboratory services, physical therapy services, occupational therapy services, or other DHS pursuant to the consolidated billing rules are considered entities that furnish DHS.[114] Accordingly, nursing facilities should review all financial relationships with physicians who refer or order such services to ensure compliance with the physician self-referral law.

When analyzing potential physician self-referral situations, the following three-part inquiry is useful:

- Is there a referral (including, but not limited to, ordering a service for a resident) from a physician for a designated health service? If not, there

[106] Under the regulations at 42 CFR 418.80, hospices must generally furnish substantially all of the core hospice service themselves. Hospices are permitted to furnish non-core services under arrangements with other providers or suppliers, including nursing facilities. 42 CFR 418.56; CMS, ''State Operations Manual,'' Pub. No. 100–07, chapter 2, section 2082C, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/IOM/list.asp*.

[107] Under certain circumstances, a nursing facility that knowingly refers to hospice patients who do not qualify for the hospice benefit may be liable for the submission of false claims. The Medicare hospice eligibility criteria are found at 42 CFR 418.20.

[108] OIG Special Fraud Alert on Fraud and Abuse in Nursing Home Arrangements With Hospices, March 1998, available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/hospice.pdf*.

[109] 42 CFR 1001.952(d).

[110] The Provider Reimbursement Manual provides as follows:

Providers are permitted to enter into reserved bed agreements, as long as the terms of that agreement do not violate the provisions of the statute and regulations which govern provider agreements, which (1) prohibit a provider from charging the beneficiary or other party for covered services; (2) prohibit a provider from discriminating against Medicare beneficiaries, as a class, in admission policies; or (3) prohibit certain types of payments in connection with referring patients for covered services. A provider may jeopardize its provider agreement or incur other penalties if it enters into a reserved bed agreement that violates these requirements.

CMS, ''Provider Reimbursement Manual,'' Pub. No. 15–1, pt. 1, ch. 21, section 2105.3(D), available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/PBM*.

[111] Nursing facilities should be mindful that conditioning the offer of reserved beds specifically on referrals of Federal health care program beneficiaries by the hospital to the nursing facility would raise concerns under the anti-kickback statute, even if no payments were made.

[112] 42 U.S.C. 1395nn.

[113] The complete list of DHS is found at section 1877(h)(6) of the Act (42 U.S.C. 1395nn(h)(6)) and 42 CFR 411.351.

[114] *See* 66 FR 856, 923 (January 4, 2001), ''Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Final Rule,'' available on CMS's Web site at *http://www.cms.hhs.gov/PhysicianSelfReferral/Downloads/66FR856.pdf*.

is no physician self-referral issue. If yes, then the next inquiry is:

• Does the physician (or an immediate family member) have a direct or indirect financial relationship with the nursing facility? A financial relationship can be created by ownership, investment, or compensation; it need not relate to the furnishing of DHS. If there is no financial relationship, there is no physician self-referral issue. If there is a financial relationship, the next inquiry is:

• Does the financial relationship fit in an exception? If not, the statute is violated.

Detailed regulations regarding the italicized terms are set forth at 42 CFR 411.351 through 411.361 (substantial additional explanatory material appears in preambles to the final regulations: 66 FR 856 (January 4, 2001), 69 FR 16054 (March 26, 2004), 72 FR 51012 (September 5, 2007), and 73 FR 48434 (August 19, 2008)).[115]

Nursing facilities should pay particular attention to their relationships with attending physicians who treat residents and with physicians who are nursing facility owners, investors, medical directors, or consultants. The statutory and regulatory exceptions are key to compliance with the physician self-referral law. Exceptions exist for many common types of arrangements.[116] To fit in an exception, an arrangement must squarely meet all of the conditions set forth in the exception. Importantly, it is the actual relationship between the parties, and not merely the paperwork, that must fit in an exception. Unlike the anti-kickback safe harbors, which are voluntary, fitting in an exception is mandatory under the physician self-referral law. Compliance with a physician self-referral law exception does not immunize an arrangement under the anti-kickback statute. Therefore, arrangements that implicate the physician self-referral law should also be analyzed under the anti-kickback statute.

In addition to reviewing particular arrangements, nursing facilities can implement several systemic measures to guard against violations. First, many of the potentially applicable exceptions require written, signed agreements between the parties. Nursing facilities should enter into appropriate written agreements with physicians. In addition, nursing facilities should review their contracting processes to ensure that they obtain and maintain signed agreements covering all time periods for which an arrangement is in place. Second, many exceptions require fair-market value compensation for items and services actually needed and rendered. Thus, nursing facilities should have appropriate processes for making and documenting reasonable, consistent, and objective determinations of fair-market value and for ensuring that needed items and services are furnished or rendered. Nursing facilities should also implement systems to track non-monetary compensation provided annually to referring physicians (such as free parking or gifts) and ensure that such compensation does not exceed limits set forth in the physician self-referral regulations.

Further information about the physician self-referral law and applicable regulations can be found on CMS's Web site at *http://www.cms.hhs.gov/PhysicianSelfReferral/*. Information regarding CMS's physician self-referral advisory opinion process can be found at *http://www.cms.hhs.gov/PhysicianSelfReferral/07_advisory_opinions.asp#TopOfPage*.

2. Anti-Supplementation

As a condition of its Medicare provider agreement and under applicable Medicaid regulations and a criminal provision precluding supplementation of Medicaid payment rates, a nursing facility must accept the applicable Medicare or Medicaid payment (including any beneficiary coinsurance or copayments authorized under those programs), respectively, for covered items and services as the complete payment.[117] For covered items and services, a nursing facility may not charge a Medicare or Medicaid beneficiary, or another person in lieu of the beneficiary, any amount in addition to what is otherwise required to be paid under Medicare or Medicaid (*i.e.*, a cost-sharing amount). For example, an SNF may not condition acceptance of a beneficiary from a hospital upon receiving payment from the hospital or the beneficiary's family in an amount greater than the SNF would receive under the PPS. For Medicare and Medicaid beneficiaries, a nursing facility may not accept supplemental payments, including, but not limited to, cash and free or discounted items and services, from a hospital or other source merely because the nursing facility considers the Medicare or Medicaid payment to be inadequate (although a nursing facility may accept donations unrelated to the care of specific patients). The supplemental payment would be a prohibited charge imposed by the nursing facility on another party for services that are already covered by Medicare or Medicaid.[118]

3. Medicare Part D

Medicare Part D extends voluntary prescription drug coverage to all Medicare beneficiaries,[119] including individuals who reside in nursing facilities. Like all Medicare beneficiaries, nursing facility residents who decide to enroll in Part D have the right to choose their Part D plans.[120] Part D plans offer a variety of drug formularies and have arrangements with a variety of pharmacies to dispense drugs to the plan's enrollees. Nursing facilities also enter into arrangements with pharmacies to dispense drugs. Typically, these are exclusive or semi-exclusive arrangements designed to ease administrative burdens and coordinate accurate administration of drugs to residents. When a resident is selecting a particular Part D plan, it may be that the Part D plan that best satisfies a beneficiary's needs does not have an arrangement with the nursing facility's pharmacy. CMS has stated that it expects nursing facilities ''to work with their current pharmacies to assure that they recognize the Part D plans chosen by that facility's Medicare beneficiaries, or, in the alternative, to add additional pharmacies to achieve that objective.'' [121] CMS also suggests that a nursing facility ''could contract exclusively with another pharmacy that contracts more broadly with Part D plans.'' [122]

CMS has explained that ''[n]ursing homes may, and are encouraged to, provide information and education to residents on all available Part D plans.'' [123] When educating residents,

[115] Available on CMS's Web site at *http://www.cms.hhs.gov/PhysicianSelfReferral/*.

[116] Section 1877(b)–(e) of the Act (42 U.S.C. 1395nn(b)–(e)). *See also* 42 CFR 411.351–.357.

[117] Section 1866(a) of the Act (42 U.S.C. 1395cc(a)); 42 CFR 489.20; section 1128B(d) of the Act (42 U.S.C. 1320a–7b(d)); 42 CFR 447.15; 42 CFR 483.12(d)(3).

[118] *See id.; see also* CMS, ''Skilled Nursing Facility Manual,'' Pub. No. 12, chapter 3, sections 317 and 318, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/PBM/list.asp.*

[119] Section 1860D–1 of the Act (42 U.S.C. 1395w–101).

[120] *Id.*

[121] *See* CMS Survey and Certification Group's May 11, 2006, letter to State Survey Agency Directors, available on CMS's Web site at *http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter06–16.pdf*. This letter communicates CMS's current guidance on these Part D issues. As the Part D program evolves, nursing facilities should keep current with any guidance issued by CMS and conform their policies and procedures accordingly.

[122] *Id.*

[123] *Id.*

nursing facilities should ensure that the information provided is complete and objective. It may be helpful for nursing facilities to walk residents through the important details of the plans available to the residents, including items such as premium and cost-sharing structures, and to discuss the extent to which each plan does, or does not, provide coverage of the resident's medications. Nursing facilities must be particularly careful, however, not to act in ways that would frustrate a beneficiary's freedom of choice in choosing a Part D plan. As stated by CMS, ''[u]nder no circumstances should a nursing home require, request, coach or steer any resident to select or change a plan for any reason,'' nor should it ''knowingly and/or willingly allow the pharmacy servicing the nursing home'' to do the same.[124] Providing residents with complete and objective information about all of the plans available to the residents helps reduce the risk that efforts to educate residents will lead to steering.

Nursing facilities and their employees and contractors should not accept any payments from any plan or pharmacy to influence a beneficiary to select a particular plan. Beneficiary freedom of choice in choosing a Part D Plan is ensured by section 1860D–1 of the Act.[125] Nursing facilities may not limit this choice in the Part D program.

E. HIPAA Privacy and Security Rules

As of April 14, 2003, all nursing facilities that conduct electronic transactions governed by HIPAA are required to comply with the Privacy Rule adopted under HIPAA.[126] Generally, the HIPAA Privacy Rule addresses the use and disclosure of individuals' personally identifiable health information (called ''protected health information'' or ''PHI'') by covered nursing facilities and other covered entities. The Privacy Rule also covers individuals' rights to understand and control how their health information is used. The Privacy Rule also requires nursing facilities to disclose PHI to the individual who is the subject of the PHI or to the Secretary of the Department of Health and Human Services under certain circumstances. The Privacy Rule and helpful information about how it applies can be found on the Web site of the Department's Office for Civil Rights (OCR).[127] Questions about the Privacy Rule should be submitted to OCR.[128]

The Privacy Rule gives covered nursing facilities and other covered entities some flexibility to create their own privacy procedures. Each nursing facility should make sure that it is compliant with all applicable provisions of the Privacy Rule, including standards for the use and disclosure of PHI with and without patient authorization and the provisions pertaining to permitted and required disclosures.

The HIPAA Security Rule specifies a series of administrative, technical, and physical security safeguards for covered entities to ensure the confidentiality of electronic PHI.[129] Nursing facilities that are covered entities were required to be compliant with the Security Rule by April 20, 2005. The Security Rule requirements are flexible and scalable, which allows each covered entity to tailor its approach to compliance based on its own unique circumstances. Covered entities may consider their organization and capabilities, as well as costs, in designing their security plans and procedures. Questions about the HIPAA Security Rule should be submitted to CMS.[130]

IV. Other Compliance Considerations

A. An Ethical Culture

As laid out in the 2000 Nursing Facility CPG, it is important for a nursing facility to have an organizational culture that promotes compliance. OIG commends nursing facilities that have adopted a code of conduct that details the fundamental principles, values, and framework for action within the organization, and that articulates the organization's commitment to compliance. OIG encourages those facilities that have not yet adopted codes of conduct to do so.

In addition to codes of conduct, an organization can adopt other measures to express its commitment to compliance. First, and foremost, a nursing facility's leadership should foster an organizational culture that values, and even rewards, the prevention, detection, and resolution of quality of care and compliance problems. Good compliance practices may include the development of a mechanism, such as a ''dashboard,'' [131] designed to communicate effectively appropriate compliance and performance-related information to a nursing facility's board of directors and senior officers. The dashboard or other communication tool should include quality of care information. Further information and resources about quality of care dashboards are available on our Web site.[132]

When communication tools such as dashboards are properly implemented and include quality of care information, the directors and senior officers can, among other things: (1) Demonstrate a commitment to quality of care and foster an organization-wide culture that values quality of care; (2) improve the facility's quality of care through increased awareness of and involvement in the oversight of quality of care issues; and (3) track and trend quality of care data (*e.g.*, State agency survey results, outcome care and delivery data, and staff retention and turnover data) to identify potential quality of care problems, identify areas in which the organization is providing high quality of care, and measure progress on quality of care initiatives. Each dashboard should be tailored to meet the specific needs and sophistication of the implementing nursing facility, its board members, and senior officers. OIG views the use of dashboards, and similar tools, as a helpful compliance practice that can lead to improved quality of care and assist the board members and senior officers in fulfilling, respectively, their oversight and management responsibilities.

In summary, the nursing facility should endeavor to develop a culture that values compliance from the top down and fosters compliance from the bottom up. Such an organizational culture is the foundation of an effective compliance program.

---

[124] *Id.*

[125] 42 U.S.C. 1395w–101.

[126] 45 CFR parts 160 and 164, subparts A and E; available at *http://www.hhs.gov/ocr/hipaa/finalreg.html.* In addition to the HIPAA Privacy and Security Rules, facilities should also take steps to adhere to the privacy and confidentiality requirements for residents' personal and clinical records, 42 CFR 483.10(e), and any applicable State privacy laws.

[127] OCR, ''HHS—Office of Civil Rights—HIPAA,'' available at *http://www.hhs.gov/ocr/hipaa/.*

[128] Nursing facilities can contact OCR by following the instructions on its Web site, available at *http://www.hhs.gov/ocr/contact.html*, or by calling the HIPAA toll-free number, (866) 627–7748.

[129] 45 CFR parts 160 and 164, subparts A and C, available on CMS's Web site at *http://www.cms.gov/SecurityStandard/02_Regulations.asp.*

[130] Nursing facilities can contact CMS by following the instructions on its Web site, *http://www.cms.hhs.gov/HIPAAGenInfo/.*

[131] Much like the dashboard of a car, a ''dashboard'' is an instrument that provides the recipient with a user-friendly (*i.e.*, presented in an appropriate context) snapshot of the key pieces of information needed by the recipient to oversee and manage effectively the operation of an organization and forestall potential problems, while avoiding information overload.

[132] *See, e.g.*, OIG, ''Driving for Quality in Long-Term Care: A Board of Director's Dashboard—Government-Industry Roundtable,'' available on our Web site at *http://oig.hhs.gov/fraud/docs/complianceguidance/Roundtable013007.pdf.*

B. Regular Review of Compliance Program Effectiveness

Nursing facilities should regularly review the implementation and execution of their compliance program systems and structures. This review should be conducted periodically, typically on annual basis. The assessment should include an evaluation of the overall success of the program, as well as each of the basic elements of a compliance program individually, which include:

- Designation of a compliance officer and compliance committee;
- Development of compliance policies and procedures, including standards of conduct;
- Developing open lines of communication;
- Appropriate training and teaching;
- Internal monitoring and auditing;
- Response to detected deficiencies; and
- Enforcement of disciplinary standards.

Nursing facilities seeking guidance for establishing and evaluating their compliance operations should review OIG's 2000 Nursing Facility CPG, which explains in detail the fundamental elements of a compliance program.[133] Nursing facilities may also wish to consult quality of care corporate integrity agreements (CIA) entered into between OIG and parties settling specific matters.[134] Other issues a nursing facility may want to evaluate are whether there has been an allocation of adequate resources to compliance initiatives; whether there is a reasonable timetable for implementation of the compliance measures; whether the compliance officer and compliance committee have been vested with sufficient autonomy, authority, and accountability to implement and enforce appropriate compliance measures; and whether compensation structures create undue pressure to pursue profit over compliance.

V. Self-Reporting

If the compliance officer, compliance committee, or a member of senior management discovers credible evidence of misconduct from any source and, after a reasonable inquiry, believes that the misconduct may violate criminal, civil, or administrative law, the nursing facility should promptly report the existence of the misconduct to the appropriate Federal and State authorities.[135] The reporting should occur within a reasonable period, but not longer than 60 days,[136] after determining that there is credible evidence of a violation.[137] Prompt voluntary reporting will demonstrate the nursing facility's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, prompt reporting of misconduct will be considered a mitigating factor by OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion) if the reporting nursing facility becomes the subject of an OIG investigation.[138]

To encourage providers to make voluntary disclosures to OIG, OIG published the Provider Self-Disclosure Protocol.[139] When reporting to the Government, a nursing facility should provide all relevant information regarding the alleged violation of applicable Federal or State law(s) and the potential financial or other impact of the alleged violation. The compliance officer, under advice of counsel and with guidance from governmental authorities, may be requested to continue to investigate the reported violation. Once the investigation is completed, and especially if the investigation ultimately reveals that criminal, civil, or administrative violations have occurred, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation. This notification should include a description of the impact of the alleged violation on the applicable Federal health care programs or their beneficiaries.

VI. Conclusion

In today's environment of increased scrutiny of corporate conduct and increasingly large expenditures for health care, it is imperative for nursing facilities to establish and maintain effective compliance programs. These programs should foster a culture of compliance and a commitment to delivery of quality health care that begins at the highest levels and extends throughout the organization. This supplemental CPG is intended as a resource for nursing facilities to help them operate effective compliance programs that decrease errors, fraud, and abuse and increase quality of care and compliance with Federal health care program requirements for the benefit of the nursing facilities and their residents.

Dated: September 24, 2008.

Daniel R. Levinson,

Inspector General.

[FR Doc. E8–22796 Filed 9–29–08; 8:45 am]

BILLING CODE 4152–01–P

[133] 2000 Nursing Facility CPG, *supra* note 2, at 14289.

[134] OIG, ''HHS—OIG—Fraud Prevention & Detection—Corporate Integrity Agreements,'' available on our Web site at *http://oig.hhs.gov/fraud/cias.html.*

[135] Appropriate Federal and State authorities include OIG, CMS, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Food and Drug Administration, the Department's Office for Civil Rights, the Federal Trade Commission, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, the Health Resources and Services Administration, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[136] To qualify for the ''not less than double damages'' provision of the False Claims Act, the provider must provide the report to the Government within 30 days after the date when the provider first obtained the information. 31 U.S.C. 3729(a).

[137] Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, OIG believes a provider should immediately report misconduct that: (i) Is a clear violation of administrative, civil, or criminal laws; (ii) poses an imminent danger to a patient's safety; (iii) has a significant adverse effect on the quality of care provided to Federal health care program beneficiaries; or (iv) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[138] OIG has published criteria setting forth those factors that OIG takes into consideration in determining whether it is appropriate to exclude an individual or entity from program participation pursuant to section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997), ''Criteria for Implementing Permissive Exclusion Authority Under Section 1128(b)(7) of the Social Security Act.''

[139] For details regarding the Provider Self-Disclosure Protocol, including timeframes and required information, see 63 FR 58399 (October 30, 1998), ''Publication of the OIG's Provider Self-Disclosure Protocol,'' available on our Web site at *http://oig.hhs.gov/authorities/docs/selfdisclosure.pdf. See also* OIG's April 15, 2008, Open Letter to Health Care Providers, available on our Web site at *http://oig.hhs.gov/fraud/docs/openletters/OpenLetter4–15–08.pdf;* OIG's April 24, 2006, Open Letter to Health Care Providers, available on our Web site at *http://oig.hhs.gov/fraud/docs/openletters/Open%20Letter%20to%20Providers%202006.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S.

Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Transgenic Mice With Conditionally-Enhanced Bone Morphogen Protein (BMP) Signaling: A Model for Human Bone Diseases

Description of Technology: This technology relates to novel animal models of several human bone diseases that have been linked to enhanced BMP signaling. More specifically, this mouse model expresses a mutant receptor for BMP, known as Alk2 that is always actively signaling. This receptor is under the control of the Cre-loxP system, which allows control of expression of the mutant Alk2 in both a developmental and tissue-specific manner. As a result, the enhanced signaling conditions exhibited in multiple human bone-related diseases can be studied with the same animals.

Applications: The mouse model can be applied to the study of BMP signaling-related human diseases such as fibrodysplasia ossificans progressiva, which involves the postnatal transformation of connective tissue into bone. Another example of BMP signaling-related disease is Craniosynostosis, which involves the premature closing of the sutures in childhood so that normal brain and skull growth are inhibited. This mouse model can potentially be used in other human diseases where BMP signaling might play a pivotal role, for example cleft lip and cleft palate, breast cancer, osteoarthritis, lung fibrosis, multiple myeloma, juvenile polyposis, cephalic neural tube closure defects, diabetes and other types of blood glucose control problems, and pulmonary hypertension.

Development Status: Early-stage development.

Inventors: Yuji Mishina, Manas Ray, Greg Scott (NIEHS).

Relevant Publications:

1. T Fukada *et al.* Generation of a mouse with conditionally activated signaling through the BMP receptor, ALK2. Genesis. 2006;44:159–167.

2. L Kan *et al.* Transgenic mice overexpressing BMP4 develop a fibrodysplasia ossificans progressiva (FOP)-like phenotype. Am J Path. 2004 Oct;165(4):1107–1115.

3. EM Shore *et al.* A recurrent mutation in the BMP type I receptor ACVR1 causes inherited and sporadic fibrodysplasia ossificans progressive. Nat Genet. 2006 May;38(5):525–527.

Patent Status: HHS Reference No. E–328–2008/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Steve Standley, Ph.D.; 301–435–4074; *sstand@mail.nih.gov*.

Production of Endotoxin Free TEV Protease

Description of Technology: This technology relates to an efficient method of purifying proteins. More specifically, this technology relates to a method of obtaining an endotoxin-free 'TEV protease,' a common name for a 27 kDa catalytic domain of the Nuclear Inclusion a (NIa) protein from Tobacco Etch Virus. TEV protease is a site-specific protease that can be used to cleave purified fusion proteins that have been engineered to contain a TEV protease cleavage site. This is typically done to enable stable expression and purification of a protein of interest. The technology consists of (a) the DNA construct (created by Dom Esposito) to allow expression of the protein in insect cells, (b) the insect cell line, and (c) the purification protocol. TEV protease itself is expressed as a fusion to MBP (Maltose Binding Protein) to enhance solubility.

Advantages: TEV protease expressed and produced in *E. coli* contains substantial amounts of endotoxin, which presents a barrier to use where the final purified product is required to be endotoxin-free. It is important to note that all proteins which are used for therapeutic purposes must have little or no endotoxin for safety reasons. The method of obtaining an endotoxin-free TEV protease is to express and purify TEV protease using a baculovirus/insect cell expression system, instead of *E. coli* which results in an endotoxin-free TEV protease.

Development Status: Early stage development.

Inventors: William K. Gillette, Dominic Esposito, and Ralph Hopkins (SAIC/NCI).

Relevant Publication: RB Kapust and DS Waugh. Controlled intracellular processing of fusion proteins by TEV protease. Protein Expr Purif. 2000 Jul;19(2):312–318.

Patent Status: HHS Reference No. E–139–2008/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@mail.nih.gov*.

Association of the ECHDCI/RNF146 Gene Region on Human Chromosome 6q With Breast Cancer Risk and Protection

Description of Technology: The technology describes a genetic locus (ECHDC l/RNF146 gene region on human chromosome 6q) that may be predictive for risk of breast cancer in relatives of individuals diagnosed with breast cancer. Furthermore, the invention provides evidence that one or more polymorphism alleles in chromosome 6q22.33 indicates a lower risk or increased risk of developing breast cancer in individuals.

Applications:

- The invention has the potential of being developed into a predictive diagnostic test, for people at a risk of breast cancer, together with other risk factors for the disease, such as age, parity, and other genetic contributions especially for predicting risk of breast cancer in individuals free of BRCA1 and BRCA2 polymorphism.
- The invention may help to develop pharmaceuticals through elucidation of the contributing biochemical, etiologic pathway.

Advantages: This study was a clinical study in a cohort of individuals. Thus the relevance of the data is of considerable significance.

Development Status: Validation of the correlation between the polymorphisms and risk of breast cancer is ongoing using different cohorts.

Inventors: Bert Gold *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 61/023,936 filed 28 Jan 2008 (HHS Ref. No. E–065–2008/0–US–01).

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov*.

Novel Chemoattractant-Based Toxins to Improve Vaccine Immune Responses for Cancer and Infectious Diseases

Description of Technology: Cancer is one of the leading causes of death in the United States and it is estimated that there will be more than half a million

deaths caused by cancer in 2008. A major drawback of the current chemotherapy-based therapeutics is the cytotoxic side-effects associated with them. Thus there is a dire need to develop new therapeutic strategies with fewer side-effects. Immuno-therapy has taken a lead among the new therapeutic approaches. Enhancing the innate immune response of an individual has been a key approach for the treatment against different diseases such as cancer and infectious diseases.

This technology involves the generation of novel chemoattractant toxins that deplete the T regulatory cells (Treg) or other immunosuppressive or hyperactivated cells locally. Treg controls activation of immune responses by suppressing the induction of adaptive immune responses, particularly T cell responses. Immunosuppressive cells such as tumor infiltrating macrophages or NKT and other cells down regulate antitumor immune responses. The chemoattractant toxins consist of a toxin moiety fused with a chemokine receptor ligand, chemokines and other chemoattractants that enables specific targeting and delivery to the Treg cells. This technology is advantageous over the more harmful antibodies and chemicals that are currently used for the systemic depletion of Treg cells. The current technology can be used therapeutically in a variety of ways. They can be used together with vaccines to increase efficacy of the vaccine for the treatment of cancer, and can be used to locally deplete Treg cells or other immuno suppressive cells to induce cytolytic cell responses at the tumor site or to eliminate chronic infectious diseases such as HIV and tuberculosis.

Applications:

- New chemoattractant based toxins targeted towards Treg cells.
- New chemoattractant based toxins targeted towards immunosuppressive NKT, and macrophages.
- New chemoattractant based toxins targeted towards local depletion of hyperactivated CD4 T cells to treat autoimmune diseases.
- Chemoattractant based toxins depleting Treg cells or other immunosuppressive cells causing enhanced vaccine immune responses.
- Novel immunotherapy by increasing vaccine efficacy against cancer and infectious diseases.

Market:

- 565,650 deaths from cancer related diseases estimated in 2008.
- The technology platform involving novel chemo-attractant based toxins can be used to improve vaccine immune responses. The cancer vaccine market is expected to increase from $135 million in 2007 to more than $8 billion in 2012.
- The technology platform has additional market in treating several other clinical problems such as autoimmune diseases.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Arya Biragyn (NIA), Dolgor Bataar (NIA), *et al.*

Related Publications:

1. Copy of manuscript from this technology can be provided once accepted for publication.

2. M Coscia, A Biragyn. Cancer immunotherapy with chemoattractant peptides. Semin Cancer Biol 2004 Jun;14(3):209–218.

3. R Schiavo *et al.* Chemokine receptor targeting efficiently directs antigens to MHC class I pathways and elicits antigen-specific CD8+ T-cell responses. Blood 2006 Jun 15;107 (12):4597–4605.

Patent Status: U.S. Patent Application filed 28 Mar 2008, claiming priority to 30 Sep 2005 (HHS Reference No. E–027–2005/0–US–06).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The NIA Laboratory of Immunology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize novel chemoattractant-based toxins. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 18, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–22889 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

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 Special Emphasis Panel; Review of Education and Career Development Award Applications.

Date: October 24, 2008.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Sand Key Resort, 1160 Gulf Boulevard, Clearwater, FL 33767.

Contact Person: Robert Bird, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Prevention Research Small Grant Program (R03).

Date: October 30–31, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, Marriot, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Community Clinical Oncology Program (CCOP).

Date: November 5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301–496–7987, *lovingeg@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: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22921 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

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 the following meetings.

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 Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: October 15–16, 2008.

Open: October 15, 2008, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Crowne Plaza Washington National Airport, 1480 Jefferson Davis Hwy, Arlington, VA 22202.

Closed: October 15, 2008, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1480 Jefferson Davis Hwy, Arlington, VA 22202.

Closed: October 16, 2008, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1480 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 21–23, 2008.

Open: October 21, 2008, 4 p.m. to 5 p.m.

Agenda: To review procedures and discuss policy.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: October 22, 2008, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: October 23, 2008, 8 a.m. to 5p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301)594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 22–23, 2008.

Open: October 22, 2008, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Closed: October 22, 2008, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Closed: October 23, 2008, 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: Barbara A Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

(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: September 19, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22892 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Iron / Malaria.

Date: October 22, 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: Rita Anand, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 19, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22894 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Gender Youth and HIV RFA

Date: October 23–24, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, Washington, DC 20005.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 18, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22895 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Prenatal Programming of Reproductive Health and Disease.

Date: October 9, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 19, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22896 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Therapeutics Based on Histone Deacetylase (HDAC) Inhibitors for the Prevention and Treatment of Central Nervous System (CNS) Metastases of Extra-CNS Origin Cancers

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), announces that the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Provisional Application 60/891,856 filed February 27, 2007 (E–084–2007/0–US–01) and International Application PCT/US2008/055149 filed February 27, 2008 (E–084–2007/0–PCT–02), entitled ''Use of Histone Deacetylase Inhibitors for the Treatment of Central Nervous System Metastases,'' to Waypharm S.A.S. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be the United States and Europe, and the field of use may be limited to therapeutics based on CNS metastases of extra-CNS origin cancers.

DATES: Only *written* comments and/or license applications which are received by the National Institutes of Health on or before December 1, 2008 will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Whitney A. Hastings, M.S., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. *Telephone:* (301) 451–7337; *Facsimile:* (301) 402–0220; *E-mail: hastingw@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The invention provides a method of treating CNS metastasis of cancers of extra-CNS origin. More specifically, the method comprises treating CNS metastasis of extra-CNS origin originating in one or more organs such as lung, breast, liver, colon, and prostate with a histone deacetylase (HDAC) inhibitor. The HDAC inhibitor can be any HDAC inhibitor that is capable of crossing the blood-brain barrier (BBB) such as vorinostat.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 18, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–22893 Filed 9–29–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notice, Treasury/CS.123 Injury Notice (66 FR 52984, October 18, 2001), from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Department of Labor, DOL/GOVT–1 ESA, Office of Workers' Compensation Programs, Federal Employees Compensation Act File (67 FR 49338, July 30, 2002), which is written to cover all Federal workers' compensation programs.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, Treasury/CS.123 Injury Notice (66 FR 52984, October 18, 2001), that was issued by Customs Service, Department of the Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding individuals who file for workers' compensation and will rely upon the existing Federal Government-wide system of records titled DOL/GOVT–1 ESA, Office of Workers' Compensation Programs, Federal Employees Compensation Act File (67 FR 49338, July 30, 2002), which is written to cover all Federal workers' compensation programs.

Eliminating this notice will have no adverse impacts on individuals but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22996 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of twelve Privacy Act system of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notices Justice/INS–026 Hiring Tracking Systems (HITS) (66 FR 46816 September 7, 2001), Justice/INS–034 Human Resources File Manager System (67 FR 56585 September 4, 2002), Treasury/CS.009 Acting Customs Inspector (66 FR 52984 October 18, 2001), Treasury/CS.083 Employee Relations Case Files (66 FR 52984 October 18, 2001), Treasury/CS.105 Former Employees (66 FR 52984 October 18, 2001), Treasury/CS.109 Handicapped Employee File (66 FR 52984 October 18, 2001), Treasury/CS.162 Organization (Customs) and Automated Position Management System (COAPMS) (66 FR 52984 October 18, 2001), Treasury/CS.163 Outside Employment Requests (66 FR 52984 October 18, 2001), Treasury/CS.193 Operating Personnel Folder Files (66 FR 52984 October 18, 2001), Treasury/CS.196 Preclearance Costs (66 FR 52984 October 18, 2001), and Treasury/CS.208 Restoration of Forfeited Annual Leave Cases (66 FR 52984 October 18, 2001), from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Office of Personnel Management, OPM/GOVT–1 General Personnel Records (71 FR 35342 June 19, 2006), which is written to cover all general Federal Government personnel records.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notices Justice/INS–026 Hiring Tracking Systems (HITS) (66 FR 46816 September 7, 2001), Justice/INS–034 Human Resources File Manager System (67 FR 56585 September 4, 2002), Treasury/CS.009 Acting Customs Inspector (66 FR 52984 October 18, 2001), Treasury/CS.083 Employee Relations Case Files (66 FR 52984 October 18, 2001), Treasury/CS.105 Former Employees (66 FR 52984 October 18, 2001), Treasury/CS.109 Handicapped Employee File (66 FR 52984 October 18, 2001), Treasury/CS.162 Organization (Customs) and Automated Position Management System (COAPMS) (66 FR 52984 October 18, 2001), Treasury/CS.163 Outside Employment Requests (66 FR 52984 October 18, 2001), Treasury/CS.193 Operating Personnel Folder Files (66 FR 52984 October 18, 2001), Treasury/CS.196 Preclearance Costs (66 FR 52984 October 18, 2001), and Treasury/CS.208 Restoration of Forfeited Annual Leave Cases (66 FR 52984 October 18, 2001), that were issued by Immigration and Naturalization Services, Department of Justice and Customs Service, Department of Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding general personnel records and will rely upon the existing Federal Government-wide system of records titled OPM/GOVT–1 General Personnel Records (71 FR 35342 June 19, 2006), which is written to cover all general Federal Government personnel records.

Eliminating these notices will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22998 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of one Privacy Act systems of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notice, DOE–33 Personnel Medical Records System (60 FR 33510 June 28, 1995), from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Office of Personnel Management, OPM/GOV–10 Employee Medical File System Records (71 FR 35360 June 19, 2006), which is written to cover all Federal employee medical file records.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, DOE–33 Personnel Medical Records System (60 FR 33510 June 28, 1995), that had been issued by the Department of Energy prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding Federal employees medical files and will rely upon the existing Federal Government-wide system of records titled OPM/GOV-10 Employee Medical File System Records (71 FR 35360 June 19, 2006), which is written to cover all Federal employee medical file records.

Eliminating this system notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22999 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act systems of records notice, FEMA/OC–1 Travel and Transportation Accounting (55 FR 37182 September 7, 1990), from its inventory of record systems and rely upon the Government-wide system of records notice issued by the General Services Administration, GSA/GOVT–4 (Contracted Travel Service Program (50 FR 20294 April 15, 1985), which is written to cover all Federal travel service programs.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, FEMA/OC–1 Travel and Transportation Accounting (55 FR 37182 September 7, 1990), that was issued by the Federal Emergency Management Agency (FEMA) prior to the creation of DHS.

DHS will continue to collect and maintain records regarding individuals who use the Department's travel and transportation resources and will rely upon the existing Federal Government-wide system of records titled GSA/GOVT–4 (Contracted Travel Service Program (50 FR 20294 April 15, 1985), which is written to cover all Federal travel service programs.

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23000 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of two Privacy Act system of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notice Treasury/CS.190 Personnel Case File (66 FR 52984 October 18, 2001) and partially retire sections of USSS.002 Chief Counsel Record System (66 FR 45362 August 28, 2001) relating to equal employment opportunities from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Equal Employment Opportunity Commission, EEOC/GOVT–1 (67 FR 49338 July 30, 2002), which is written to cover all Federal equal employment opportunity programs.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, Treasury/CS.190 Personnel Case File (66 FR 52984 October 18, 2001), and partially retire USSS.002 Chief Counsel Record System (66 FR 45362 August 28, 2001), that were issued by the Department of Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding employees who file a grievance or complaint and/or whom disciplinary action has been proposed or taken under the equal opportunity program and will rely upon the existing Federal Government-wide system of records titled EEOC/GOVT–1 Equal Employment Opportunity Commission (67 FR 49338 July 30, 2002), which is written to cover all Federal equal employment opportunity programs.

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and

management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23001 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of two Privacy Act system of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notice Treasury/CS.190 Personnel Case File (66 FR 52984 October 18, 2001) and partially retire sections of USSS.002 Chief Counsel Record System (66 FR 45362 August 28, 2001) relating to equal employment opportunities from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Equal Employment Opportunity Commission, EEOC/GOVT–1 (67 FR 49338 July 30, 2002), which is written to cover all Federal equal employment opportunity programs.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, Treasury/CS.190 Personnel Case File (66 FR 52984 October 18, 2001), and partially retire USSS.002 Chief Counsel Record System (66 FR 45362 August 28, 2001), that were issued by the Department of Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding employees who file a grievance or complaint and/or whom disciplinary action has been proposed or taken under the equal opportunity program and will rely upon the existing Federal Government-wide system of records titled EEOC/GOVT–1 Equal Employment Opportunity Commission (67 FR 49338 July 30, 2002), which is written to cover all Federal equal employment opportunity programs.

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23002 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Consolidation of Department of Homeland Security Training Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to consolidate seven Privacy Act system of records notices; Notice of an additional routine use.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate the following Privacy Act system of records notices, Treasury/CS.238 Training and Career Individual Development Plans (66 FR 52984 October 18, 2001), Treasury/CS.239 Training Records (66 FR 52984 October 18, 2001), FEMA/NETC–1 Student Application and Registration Records (55 FR 37182 September 7, 1990), FEMA/NETC–2 Emergency Management Training Program Home Study Courses (55 FR 37182 September 7, 1990), FEMA/NETC–4 Associate Faculty Tracking System (55 FR 37182 September 7, 1990), Treasury/FLETC. 002 FLETC Trainee Records (66 FR 43955 August 21, 2001), and USSS.009 Training Information System (66 FR 45362 August 28, 2001), into the existing Department of Homeland Security-wide system of records notice titled DHS/ALL–003 Department of Homeland Security General Training Records (71 FR 26767 May 8, 2006).

Additionally, the Department of Homeland Security is giving notice that it proposes to add a routine use to the existing Department of Homeland Security-wide system of records notice titled DHS/ALL–003 Department of Homeland Security General Training Records (71 FR 26767 May 8, 2006). The routine use is to providing training records to employers to the extent necessary to obtain information pertinent to the individual's fitness and qualifications for training and to provide training status.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is consolidating the system of records notice, Treasury/CS.238 Training and Career Individual Development Plans (66 FR 52984 October 18, 2001), that has been issued by Customs Service, Department of Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding individuals who attend DHS-sponsored training programs and will rely upon the existing DHS-wide system of records notice titled DHS/ALL–003 Department of Homeland Security General Training Records (71 FR 26767 May 8, 2006).

For similar reasons, DHS is reclassifying six additional legacy systems of records notices. The second system, Treasury/CS.239 Training Records (66 FR 52984 October 18, 2001), is also maintained by Customs Service, Department of Treasury and records Customs employees who have completed training.

The third system, FEMA/NETC–1 Student Application and Registration Records (55 FR 37182 September 7, 1990), is maintained by the Federal Emergency Management Agency (FEMA). This system records individuals who apply for and complete resident and field emergency management training conducted under the auspices of the National Emergency Training Center. This system also records individuals who apply for and complete courses at the National Fire Academy and Emergency Management Institute.

The fourth system, FEMA/NETC–2 Emergency Management Training Program Home Study Courses (55 FR 37182 September 7, 1990), is maintained by FEMA and records individuals who are enrolled in and/or have completed home study courses

offered by the Emergency Management Training Program.

The fifth system, FEMA/NETC–4 Associate Faculty Tracking System (55 FR 37182 September 7, 1990), is maintained by FEMA and records individuals who provide instruction in the delivery of Office of Training resident and field courses.

The sixth system, Treasury/FLETC.002 FLETC Trainee Records (66 FR 43955 August 21, 2001), is maintained by the Federal Law Enforcement Training Center (FLETC) and records individuals who attend a FLETC-sponsored training program, symposium, or similar event.

The seventh system, USSS.009 Training Information System (66 FR 45362 August 28, 2001), is maintained by the United States Secret Service and records the training records of current and former Secret Service employees and officers of the Secret Service Uniformed Division.

Additionally, the Department of Homeland Security is giving notice that it proposes to add a routine use to the existing Department of Homeland Security-wide system of records notice titled DHS/ALL–003 Department of Homeland Security General Training Records (71 FR 26767 May 8, 2006). The routine use is to providing training records to employers to the extent necessary to obtain information pertinent to the individual's fitness and qualifications for training and to provide training status.

Eliminating these notices and adding this routine use will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23003 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Consolidation of Department of Homeland Security Office of the Inspector General Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to consolidate one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate the following Privacy Act system of records notices, FEMA/IG–1 General Investigative Files (55 FR 37182 September 7, 1990), into the existing Department of Homeland Security-wide system of records notice titled DHS/OIG–002 Office of Inspector General (OIG) Investigations Data Management System (IDMS) (70 FR 58448 October 6, 2005).

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is consolidating the system of records notice, FEMA/IG–1 General Investigative Files (55 FR 37182 September 7, 1990), that has been issued by the Federal Emergency Management Agency prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding investigations and will rely upon the existing DHS-wide system of records notice titled Office of Inspector General (OIG) Investigations Data Management System (IDMS) (70 FR 58448 October 6, 2005).

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23004 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of two Privacy Act system of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notices, Treasury/CS.001 Acceptable Level of Competence, Negative Determination (66 FR 52984 October 18, 2001) and Treasury/CS.286 Electronic Job Application Processing System (66 FR 52984 October 18, 2001), from its inventory of records systems and rely upon the Government-wide system of records notice issued by the Office of Personnel Management, OPM/GOVT–5 Recruiting, Examining, and Placement Records (71 FR 35351 June 19, 2006) which is written to cover all Federal recruiting, examining, and placement activities.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the systems of records notices Treasury/CS. 001 Acceptable Level of Competence, Negative Determination (66 FR 52984 October 18, 2001) and Treasury/CS.286 Electronic Job Application Processing System (66 FR 52984 October 18, 2001), that were issued by Customs Service, Department of the Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding individuals involved in recruitment, examining and placement activities and will rely upon the existing Federal Government-wide system of records titled OPM/GOVT–5 Recruiting, Examining, and Placement Records, (71 FR 35351 June 19, 2006), which is written to cover all recruiting, examining, and placement activities.

Eliminating these notices will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23005 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notice, Treasury/CS.054 Confidential Statements of Employment and Financial Interests (66 FR 52984 October 18, 2001), from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Office of Government Ethics, OGE/GOVT–2 Executive Branch Confidential Financial Disclosure Reports (68 FR 24722 May 8, 2003), which is written to cover all confidential statements of employment and financial interests record systems submitted by Federal Government employees.

DATES: These changes will take effect on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, Treasury/CS.054 Confidential Statements of Employment and Financial Interests (66 FR 52984 October 18, 2001), that was issued by the Customs Service, Department of the Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding individuals who submit confidential statements of employment and financial interests and will rely upon the existing Federal Government-wide system of records notice titled OGE/GOVT–2 Executive Branch Confidential Financial Disclosure Reports (68 FR 24722 May 8, 2003), which is written to cover Federal employees who submit confidential statements of employment and financial interests.

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: September 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23006 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0991]

Proposed Modernization of the Coast Guard; Final Programmatic Environmental Assessment

AGENCY: Coast Guard, DHS.

ACTION: Notice of Availability of Final Programmatic Environmental Assessment and Finding of No Significant Impact.

SUMMARY: The Coast Guard announces the availability of the Final Programmatic Environmental Assessment (PEA) for Coast Guard modernization. Based on the PEA's analysis and the mitigation plan committed to in the PEA, the Coast Guard determined that an environmental impact statement is not required, and a Finding of No Significant Impact (FONSI) has been issued for the proposed action.

Availability: Electronic copies of the Final PEA and FONSI, as well as comments received on the Draft PEA and FONSI, are available from the Federal Docket Management Facility at Internet Web site address: *http://www.regulations.gov* using the docket number USCG–2008–0991.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, please contact Ms. Kebby Kelley, USCG, telephone (202) 475–5690, e-mail: *Kebby.Kelley@uscg.mil*, or Mr. Frank Esposito, USCG, telephone (202) 372–3746, e-mail: *Frank.H.Esposito@uscg.mil*. If you have questions on viewing the docket, please call Ms. Renee Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Coast Guard prepared a Final PEA and FONSI for the Proposed Modernization of the Coast Guard.

Response to Comments

On August 15, 2008, the Coast Guard initiated a 30-day public comment period with publication of a Notice of Availability of the Proposed Modernization of the Coast Guard Draft PEA in the **Federal Register** (73 FR 47959). The Coast Guard received 23 public comments during this period.

Summary of Comments and the USCG Responses

Many of the 23 separate comments either acknowledged receipt or noted approval of the Coast Guard's modernization proposal. The remaining comments fell into the following four groups.

Several comments focused on the managerial philosophy and motivation of the Coast Guard in proposing this modernization. While these comments are useful to decision makers, they are not relevant to the environmental impact analyses associated with the proposed modernization and, therefore, will not be addressed in the Final PEA.

A second group of comments focused on decisions that are yet to be made, such as exact locations of possible new facilities or precise organizations that might or might not be moved. While these comments are also useful to decision makers, they are not yet ripe for further analysis and will not be considered further in the Final PEA. As stated in the Draft PEA, NEPA analysis and documentation may be prepared for future individual actions and their site-specific impacts if such actions are not adequately covered by this programmatic NEPA document.

The third group of comments advocated moving large segments of the Coast Guard to various new locations around the nation. These alternatives do not meet the purpose and need described in the PEA to minimize disruption to the workforce, minimize costs of modernization (such as, by utilizing existing facilities), and minimize disruption to mission execution. These proposals are, therefore, not evaluated in detail in the Final PEA.

Finally, a fourth group of comments was not addressed because it raised matters, such as the Deepwater Replacement contract, that are outside the scope of the Coast Guard modernization decision.

Background and Purpose

The Coast Guard intends to modernize its command structure, support systems, and business practices to position itself for sustainable and effective mission execution into the

twenty-first century. The Coast Guard prepared a PEA that identified and examined the reasonable alternatives and assessed their potential environmental impacts. The PEA identified potential direct, indirect, and cumulative impacts associated with proposed modernization, including Coast Guard mission-related impacts and site-specific impacts.

The Coast Guard developed two action alternatives to achieve modernization, a full modernization alternative and a partial modernization alternative. These two alternatives represented the upper and lower levels of change required to achieve the purpose and need of the modernization and, therefore, captured the range of social, economic, and environmental impacts that would occur while implementing modernization initiatives. The full modernization alternative emphasizes co-location of mission support and operations resources and functions and included potential construction at the Coast Guard Yard, Curtis Bay, Maryland. The partial modernization alternative would focus on operating from existing locations rather than co-locating functional resources in a single location and includes no new construction. The partial modernization alternative would minimally achieve the purpose and need for modernization, while the full modernization alternative would allow the Coast Guard to reach the fully envisioned functionality of modernization. The Coast Guard prefers the full modernization alternative. Either modernization alternative would be implemented over at least 5 years.

The Coast Guard has determined that the mitigation committed to in the Final Coast Guard-prepared PEA will reduce all potentially significant environmental impacts to a level of insignificance. Thus, the Final PEA was determined to adequately and accurately discuss the environmental issues and impacts of the proposed action and provides sufficient evidence and analysis for determining that an environmental impact statement is not required. A Finding of No Significant Impact was, therefore, issued for the full modernization alternative which is the Coast Guard's preferred alternative.

Dated: September 24, 2008.

Clifford I. Pearson,

Vice Admiral, U.S. Coast Guard, Chief of Staff.

[FR Doc. E8–22934 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1793–DR]

Arkansas; 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 Arkansas (FEMA–1793–DR), dated September 18, 2008, and related determinations.

DATES: *Effective Date:* September 18, 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 September 18, 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 Arkansas resulting from severe storms and flooding during the period of September 2–8, 2008, and continuing, 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 Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth M. Riley of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this declared major disaster:

Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Conway, Dallas, Drew, Garland, Grant, Hot Spring, Lincoln, Montgomery, Perry, Prairie, Saline, and Van Buren Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Arkansas 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. E8–22950 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1786–DR]

Louisiana; Amendment No. 7 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 Louisiana (FEMA–1786–DR), dated September 2, 2008, and related determinations.

DATES: *Effective Date:* September 18, 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 Louisiana 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 September 2, 2008.

Allen, Avoyelles, Beauregard, Cameron, East Feliciana, Evangeline, Jefferson Davis, Lafayette, Orleans, Rapides, Sabine, St. Charles, St. John the Baptist, St. Martin, St. Mary, Terrebonne, and Vermilion Parishes for Public Assistance (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

Calcasieu, Franklin and St. Tammany Parishes for Public Assistance (already designated for Individual Assistance and 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 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. E8–22948 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1792–DR]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1792–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* September 18, 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 Louisiana 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 September 13, 2008.

Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson, Jefferson Davis, Lafourche, Plaquemines, Sabine, St. Mary, Terrebonne, Vermilion, and Vernon Parishes for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program (already designated for Individual Assistance and debris removal [Category A], 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 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. E8–22949 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1787–DR]

New Hampshire; 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 New Hampshire (FEMA–1787–DR), dated September 5, 2008, and related determinations.

DATES: *Effective Date:* September 18, 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 New Hampshire 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 New Hampshire.

Carroll 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 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. E8–22947 Filed 9–29–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

[Docket No. FLETC–2008–0003]

State and Local Training Advisory Committee

AGENCY: Federal Law Enforcement Training Center (FLETC), DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The State and Local Training Advisory Committee (SALTAC) will meet on October 16, 2008, on St. Simons Island, GA. The meeting will be open to the public.

DATE: The State and Local Training Advisory Committee will meet Thursday, October 16, 2008, from 8 a.m. to 4 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Epworth by the Sea, 100 Arthur J. Moore Drive, St. Simons Island, GA 31522. Send written material, comments, and/or requests to make an oral presentation to the contact person listed below by October 6th. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by October 6th. Comments must be identified by FLETC–2008–0003 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: reba.fischer@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (912) 267–3531. (Not a toll-free number.)
- *Mail:* Reba Fischer, Designated Federal Officer (DFO), Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the State and Local Training Advisory Committee, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; (912) 267–2343; *reba.fischer@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the State and Local Training Advisory Committee is to advise and make recommendations on matters relating to the selection, development, content and delivery of training services by the OSL/FLETC to its state, local, campus, and tribal law enforcement customers.

Draft Agenda

The draft agenda for this meeting includes briefings to update committee members on OSL and FLETC training initiatives and to provide feedback on committee recommendations. Committee members will be asked to provide recommendations on intelligence led policing, rural training needs, and validation of training programs.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Visitors must pre-register attendance to ensure adequate seating. Please provide your name and telephone number by close of business on October 6, 2008, to Reba Fischer (contact information above).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Reba Fischer as soon as possible.

Dated: September 11, 2008.

Seymour A. Jones,

Deputy Assistant Director, Office of State and Local Law Enforcement Training.

[FR Doc. E8–22997 Filed 9–29–08; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2008–N0235; 30120–1113–0000 C4; 50120–1113–0000 C4]

Endangered and Threatened Wildlife and Plants; 5-Year Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information on the piping plover (*Charadrius melodus*).

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), initiate 5-year reviews of the piping plover (Atlantic Coast, Great Lakes, and Northern Great Plains populations) under the Endangered Species Act of 1973, as amended (Act). We request any new information on these populations that may have a bearing on their classification as endangered or threatened. Based on the results of these 5-year reviews, we will make a finding on whether these populations are properly classified under the Act.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than December 1, 2008. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review the information that we receive on these populations, see ''Public Solicitation of New Information.''

FOR FURTHER INFORMATION CONTACT: Please contact the appropriate person under ''Public Solicitation of New Information.'' Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance.

SUPPLEMENTARY INFORMATION: We initiate 5-year reviews of the Atlantic Coast, Great Lakes, and Northern Great Plains populations of the piping plover (*Charadrius melodus*), under the Act. In our December 11, 1985, final rule listing the piping plover across its range, we determined the Great Lakes breeding population to be endangered (but threatened when occurring outside of the Great Lakes watershed—See Table 1) and the Atlantic Coast and Great Plains populations to be threatened (50 FR 50726). We then approved recovery plans for the Atlantic Coast (USFWS 1988a, 1996), Great Lakes (USFWS 1988b, 2003), and Northern Great Plains (USFWS 1988b) populations. The three populations share wintering habitats along the Atlantic and Gulf Coasts, from North Carolina to Mexico and into the Caribbean Islands.

We request any new information on these populations that may have a bearing on their classification as endangered or threatened.

Based on the results of these 5-year reviews, we will make findings on whether these populations are properly classified under the Act.

Why Do We Conduct a 5-Year Review?

Under the Act, we maintain the List of Endangered and Threatened Wildlife and Plant Species (List) at 50 CFR 17.11 and 17.12. We amend the List by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine (1) whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified

from threatened to endangered. Using the best scientific and commercial data available, a species will be considered for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. Therefore, we are requesting submission of any such information that has become available for each of the three piping plover populations since we initiated the last formal status review on November 6, 1991 (56 FR 56882). Based on the results of these 5-year reviews, we will make the requisite findings under section 4(c)(2)(B) of the Act.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under review. This notice announces initiation of our active review of the piping plover (Table 1).

TABLE 1—PIPING PLOVER LISTING INFORMATION SUMMARY

Common name	Scientific name	Status	Where listed	Final listing rule
Piping plover (Great Lakes breeding population).	*Charadrius melodus*	Endangered	U.S.A. (Great Lakes watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI), Canada (Ont.).	50 FR 50726; 12/11/1985
Piping plover (Atlantic Coast and Northern Great Plains populations).	*Charadrius melodus*	Threatened	Entire, except those areas where listed as endangered above.	50 FR 50726; 12/11/1985

What Information Do We Consider in Our Review?

In our 5-year review, we consider all new information available at the time of the review. These reviews will consider the best scientific and commercial data that have become available since the original listing determination or most recent status review of each species, such as—(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) Habitat conditions, including but not limited to amount, distribution, and suitability; (C) Conservation measures that have been implemented to benefit the species; (D) Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and (E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

Public Solicitation of New Information

We request any new information concerning the status of the piping plover (Atlantic Coast, Great Lakes, and Northern Great Plains populations). See ''What Information Do We Consider in Our Review?'' for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of the species; information regarding the effects of current land management on population distribution and abundance; information on the current condition of habitat; and recent information regarding conservation measures that have been implemented to benefit the species. Additionally, we specifically request information regarding the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act) and the species' listed status as judged against the definition of threatened or endangered. Finally, we solicit recommendations pertaining to the development of, or potential updates to recovery plans and additional actions or studies that would benefit these populations in the future.

Our practice is to make information, including names and home addresses of respondents, available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your response, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your response to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Submit all electronic information in Text or Rich Text format. Provide your name and return address in the body of your message, and include the following identifier in the e-mail subject line: ''Information on 5-year review for Piping Plover.'' You may also view information we receive in response to this notice, as well as other documentation in our files, at the locations below by appointment, during normal business hours. Please contact the appropriate person below. Mail or hand-deliver information to the address(es) below as the information pertains to the piping plover in the corresponding States and other areas:

Michigan, Wisconsin, Minnesota, Illinois, Indiana, Ohio, Pennsylvania, and Ontario: U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–5902; Attention: Mr. Jack Dingledine. Direct inquiries to Mr. Dingledine at 517–351–6320 (phone) or *FW3MidwestRegion_5YearReview@fws.gov* (e-mail).

Montana, North Dakota, South Dakota, Iowa, Nebraska, Colorado, Kansas, Alberta, Saskatchewan, and Manitoba: U.S. Fish and Wildlife Service, 3425 Miriam Avenue, Bismarck, ND 58501; Attention: Ms. Carol Aron. Direct inquiries to Ms. Aron at 701–250–4481 (phone) or *carol_aron@fws.gov* (e-mail).

North Carolina, South Carolina, Georgia, Bahamas, Cuba, Puerto Rico, and other Caribbean Islands: U.S. Fish and Wildlife Service, P.O. Box 33726, Raleigh, NC 27636–3726; Attention: Mr. David Rabon. Direct inquiries to Mr. Rabon at 919–856–4520, extension 16 (phone) or *david_rabon@fws.gov* $fnl;(e-mail).

Texas and Mexico: U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o TAMUCC, 6300 Ocean Drive—USFWS Unit 5837, Corpus Christi, TX 78412–5837; Attention: Ms. Robyn Cobb. Direct inquiries to Ms.

Cobb at 361–994–9005 (phone) or *robyn_cobb@fws.gov* (e-mail).

Florida, Alabama, Mississippi, and Louisiana: U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405; Attention: Ms. Patty Kelly. Direct inquiries to Ms. Kelly at 850–769–0552, extension 228 (phone) or *patricia_kelly@fws.gov* (e-mail).

Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, Newfoundland, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and St. Pierre and Miquelon (France), piping plovers in any area not listed above, information pertinent to multiple regions: U.S. Fish and Wildlife Service, 73 Weir Hill Road, Sudbury, MA 01776; Attention: Ms. Anne Hecht. Direct inquiries to Ms. Hecht at 978–443–4325 (phone) or *anne_hecht@fws.gov* (e-mail).

How Are These Populations Currently Listed?

Table 1 provides current listing information. Also, the List, which covers all listed species, is available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species*.

Definitions

To help you submit information about the species we are reviewing, we provide the following definitions:

Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature;

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range; and

Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of Our Review?

For the species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the population from threatened to endangered (uplist); (b) reclassify the population from endangered to threatened (downlist); or (c) remove the population(s) from the List (delist).

If we determine that a change in classification is not warranted, then the populations will remain on the List under their current status.

References

U.S. Fish and Wildlife Service, 1988a. Atlantic Coast piping plover recovery plan. U.S. Fish and Wildlife Service, Newton Corner, MA. 77pp.

____, 1988b. Great Lakes and Northern Great Plains piping plover recovery plan. U.S. Fish and Wildlife Service, Twin Cities, MN. 160pp.

____, 1996. Piping plover (*Charadrius melodus*) Atlantic Coast population, revised recovery plan. Hadley, MA. 258pp.

____, 2003. Recovery plan for the Great Lakes piping plover (*Charadrius melodus*). Ft. Snelling, MN. 141pp.

Authority

We publish this document under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 2008.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. E8–23073 Filed 9–26–08; 4:15 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0240; 96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
170807	Dirk Arthur dba Stage Magic Inc	73 FR 21981; April 23, 2008	July 29, 2008.

ENDANGERED MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
167514	Catherine L. Foy, Foy Marine Consulting	73 FR 23266; April 29, 2008	August 22, 2008.

Dated: August 22, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–22954 Filed 9–29–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0238; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 30, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: The Science and Conservation Center, Zoo Montana, Billings, MT, PRT–187319.

The applicant requests a permit to import blood samples from 4 female captive bred Przewalski's horses (*Equus przewalskii*) at the Association pour le cheval de Przewalski, France, for the purpose of enhancement of the propagation or survival of the species. This notification covers a one-time import.

Applicant: North Carolina Wildlife Resources Commission, Beaufort, NC, PRT–192398.

The applicant requests a permit to import one live stranded Kemp's ridley (*Lepidochelys kempii*) sea turtle from the United Kingdom for the purpose of enhancement of the survival of the species.

Applicant: Virginia Safari Park, Natural Bridge, VA, PRT–192751.

The applicant requests a permit to import two male captive-bred cheetahs (*Acinonyx jubatus*) from the De Wildt Cheetah Breeding Center, South Africa for the purpose of enhancement of the survival of the species.

Applicant: Houston Zoo, Inc., Houston, TX, PRT–192243.

The applicant requests a permit to purchase in interstate commerce one female Asian elephant (*Elephas maximus*) born in the wild during 1983 from Have Trunk Will Travel, Perris, California for the purpose of enhancement of the survival of the species.

Applicant: Ricardo Longoria, Laredo, TX, PRT–192403.

The applicant requests a permit authorizing take, interstate and foreign commerce of swamp deer (*Rucervus duvaucelii*), from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Arno W. Weiss, St. Charles, MI, PRT–191092.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Eldon R. Bell, San Angelo, TX, PRT–191126.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Bruce R. Schoeneweis, Alton, IL, PRT–191134.

The applicant requests a permit to import the sport-hunted trophies of two male bonteboks (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: August 22, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–22955 Filed 9–29–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS—R9–IA–2008–N0220; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 30, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: University of Illinois Veterinary Diagnostic Laboratory, Maywood, IL, PRT–187330.

The applicant requests a permit to import biological specimens taken worldwide from dead wild and captive-held threatened and endangered species of Canidae (wolves, foxes, dholes and wild dogs), Hyaenidae (hyaenas), Felidae (cats), and Mustelidae (otters, not including marine and sea otters) for the purpose of enhancement of the survival of the species through disease and death investigations. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Florida Museum of Natural History, Gainesville, FL, PRT–677336.

The applicant requests renewal of their permit to import, export, and re-export non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: El Paso Zoo, El Paso, TX, PRT–191094.

The applicant requests a permit to export one female captive-born Malayan tapir (*Tapirus indicus*) to Africam Safari, Mexico for the purpose of enhancement of the species through captive breeding and conservation education.

Applicant: Captive-bred Wildlife Foundation, Portal, AZ, PRT–191393.

The applicant requests a permit to export 6 captive hatched Galapagos tortoises (*Chelonoidis nigra*) to Edward Cham, Ouezon City, Philippines for the purpose of enhancement of the survival of the species.

Applicant: David W. Nesbit, Gonzales, TX, PRT–189408.

The applicant requests a permit authorizing take, interstate and foreign commerce of swamp deer (*Rucervus duvaucelii*), from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a five-year period.

Applicant: David E. Robinson, Rancho Sante Fe, CA, PRT–162422.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Aymer L. Curtin, Gainsville, FL, PRT–170073.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Christopher J. Reinesch, Gilbert, AZ, PRT–185764.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas D. Lund, Gardnerville, NV, PRT–185974.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Brook F. Minx, Houston, TX, PRT–185959.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Patricia A. Pilia, Longmont, PRT–190199.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: August 8, 2008.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–22973 Filed 9–29–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California Desert District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, November 14, 2008 from 8 a.m. to 4 p.m., and meet in formal session on Saturday, November 15 from 8 a.m. to 4 p.m. at the Heritage Inn and Suites, 1050 N. Norma, Ridgecrest, CA.

The Council and interested members of the public will depart for the field tour at 8 a.m. from the lobby of the Heritage Inn and Suites. The public is welcome to participate in the tour but should plan on providing their own transportation, lunch, and beverage. A four-wheel drive vehicle is strongly recommended for the field tour.

Agenda topics for the formal session on Saturday will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics are being developed. Once finalized, the field tour and meeting agendas will be published in a news release prior to the meeting and posted on the BLM California state Web site at *http://www.blm.gov/ca/news/rac.html.*

SUPPLEMENTARY INFORMATION: All California Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 4 p.m., the meeting could conclude prior to 4 p.m. should the Council conclude its presentations and discussions. Therefore, members of the

public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: September 17, 2008.

Steven J. Borchard,

District Manager.

[FR Doc. E8–22923 Filed 9–29–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Advisory Commission (the Commission) will be held on Monday, October 20, at 10 a.m., at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC. If the meeting must be continued, the meeting will resume at this same location on Friday, November 7, 2008, at 1 p.m.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review three action items:

1. A request to extend the Martin Luther King, Jr., Memorial Foundation's authority to establish the Martin Luther King, Jr., Memorial in Washington, DC.

2. H.R. 6195, a bill to authorize the Korean War Veterans Association to establish a commemorative work on Federal land in the District of Columbia near the Korean War Veterans Memorial to honor members of the Armed Forces who have served in Korea since July 28, 1953.

3. H.R. 6696, a bill to authorize the American Battle Monuments Commission to establish a memorial in the District of Columbia or its environs to honor members of the Armed Forces who served in World War I.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission.

DATES: Monday, October 20, 2008, and Friday, November 7, 2008.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov*, by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service;

Administrator, General Services Administration;

Chairman, National Capital Planning Commission;

Chairman, Commission of Fine Arts;

Mayor of the District of Columbia;

Architect of the Capitol;

Chairman, American Battle Monuments Commission;

Secretary of Defense.

Dated: September 11, 2008.

Lisa A. Mendelson-Ielmini,

Regional Director, National Capital Region.

[FR Doc. E8–22903 Filed 9–29–08; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0003).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Reclamation (Reclamation, we) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Right-of-Use Application (Form 7–2540), OMB Control Number: 1006–0003. Title 43 CFR part 429 requires that applicants for certain uses of Bureau of Reclamation land apply using Form 7–2540. We request your comments on specific aspects of the revised Right-of-Use Application Form.

DATES: We must receive your written comments on or before December 1, 2008.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: 84–53000, PO Box 25007, Denver, CO 80225–0007. You may request copies of the proposed revised application form by writing to the above address or by contacting Greek Taylor at (303) 445–2895.

FOR FURTHER INFORMATION CONTACT: Greek Taylor at: (303) 445–2895.

SUPPLEMENTARY INFORMATION:

I. Abstract

Reclamation is responsible for approximately 8 million acres of land which directly support Reclamation's Federal water projects in the 17 western states. Individuals or entities wanting to use Reclamation's lands, facilities, or waterbodies must submit an application to gain permission for such uses. Examples of such uses are:

—Agricultural uses such as grazing and farming;

—commercial or organized recreation and sporting activities;

—other commercial activities such as ''guiding and outfitting'' and ''filming and photography;'' and

—resource exploration and extraction, including sand and gravel removal and timber harvesting.

Reclamation reviews applications to determine whether granting individual use authorizations is compatible with Reclamation's present or future uses of the lands, facilities, or waterbodies. When we find a proposed use compatible, we advise the applicant of the estimated administrative costs and estimated application processing time. In addition to the administrative costs, we require the applicant to pay the value of the use authorization based on an appraisal or competitive bidding. If the application is for construction of a bridge, building, or other significant construction project, Reclamation may require that all plans and specifications be signed and sealed by a professional engineer licensed by the State in which the work is proposed.

II. Changes to the Right of Use Application Form and Its Instructions

We changed the form and its instructions to comply with proposed revisions to 43 CFR part 429. The name of the form is now ''Use Authorization Application'' and ''right-of-use'' is replaced with ''use authorization'' in the form and instructions. We expanded the examples in the instructions of proposed uses for which you may seek permission. The instructions reflect the reduction of the application fee from $200 to $100. We made other changes to the form and the instructions to improve the readability and information-gathering. For instance, the form now requests day and evening phone numbers, instead of work and home numbers.

III. Data

OMB Control Number: 1006–0003.

Title: Right-of-Use Application.

Form Number: Form 7–2540.

Frequency: Each time a right-of-use is requested.

Respondents: Individuals, corporations, companies, and State and local entities who want to use Reclamation lands, facilities, or waterbodies.

Estimated Annual Total Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Annual Responses: 500.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Estimated Completion Time Per Respondent: 2 hours.

IV. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

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

(d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

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

Dated: September 17, 2008.

Roseann Gonzales,

Policy and Program Services, Denver Office.

[FR Doc. E8–22916 Filed 9–29–08; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–647]

In the Matter of Certain Hand-Held Meat Tenderizers; Notice of Decision Not To Review an Initial Determination Terminating the Investigation Based on the Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 6) issued by the presiding administrative law judge (''ALJ'') terminating the investigation based on the withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 8, 2008, the Commission instituted this investigation based on the complaint, as supplemented, of Jaccard Corporation of Orchard Park, New York (''Jaccard''), alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hand-held meat tenderizers by reason of infringement of U.S. Trademark Registration No. 1,172,879 and also by reason of infringement of trade dress. 73 FR 27846 (May 14, 2008). The respondents are Keystone Manufacturing, Inc. of Buffalo, New York and Mr. Bar-B-Q-, Inc. of Old Bethpage, New York. 73 FR 41117 (July 17, 2008).

On August 26, 2008, Jaccard moved to withdraw its complaint and terminate the investigation as to all respondents ''without prejudice.'' Respondents objected on the ground that the termination should be ''with prejudice.'' The investigative attorney argued that the investigation should be terminated based on the withdrawal of the complaint without styling the termination as either with or without prejudice. The ALJ agreed and therefore granted the termination without stating that it is ''with prejudice'' or ''without prejudice.'' No petitions for review of this ID were filed. The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 24, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–22862 Filed 9–29–08; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Exelon Nuclear Texas Holdings, LLC; Notice of Receipt and Availability of Application for a Combined License

On September 2, 2008, Exelon Nuclear Texas Holdings, LLC filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the Code of Federal Regulations (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' an application for a combined license (COL) for two economic simplified boiling water reactor (ESBWR) nuclear power plants, to be located in Victoria County, Texas. The reactors are to be identified as Victoria County Station, Units 1 and 2.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to [10 CFR 52.77], as well as technical information submitted pursuant to [10 CFR 52.79].

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The cover letter ADAMS accession number is ML082540469. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html*.

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

For the Nuclear Regulatory Commission.

Mark E. Tonacci,

Senior Project Manager, ESBWR/ABWR Projects Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–22909 Filed 9–29–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3400, License No. P–4001 (Expired), R–230 (Expired)]

Salmon River Uranium Development Site; Notice of Completion of Remediation at Salmon River Uranium Development Site, Near North Fork, ID

ACTION: Notice of completion of remediation at the Salmon River Uranium Development Site, near North Fork, Idaho.

SUMMARY: The Nuclear Regulatory Commission (NRC) is noticing the completion of remediation activities at the Salmon River Uranium Development Site, near North Fork, Idaho.

Background: The U.S. Atomic Energy Commission (AEC) issued Source Material License P–4001 to Salmon River Uranium Development, Inc. (SRUD) on October 10, 1958. This license authorized SRUD to possess and transfer source material. On March 30, 1959, the AEC issued Source Material License No. R–0230 to SRUD. This license authorized the receipt and possession of source material for processing. Source Material License No. R–0230 expired on June 30, 1959 and Source Material License No. P–4001 expired on October 31, 1959.

Both uranium and thorium ores were processed at the site. Processing of source material occurred at two separate times, the late-1950s and the late-1970s. Processing operations were conducted in the late-1950s in accordance with the AEC licenses. During the late-1970s, pilot plant operations were conducted at the site to determine the viability of experimental ore processing techniques.

The SRUD site was placed on the NRC's Site Decommissioning Management Plan (SDMP) list in 1994. In May 2001, NRC staff visited the SRUD site and identified thorium contamination in the form of partially processed ore. In 2003, the NRC and the Oak Ridge Institute for Science and Education conducted scoping surveys of the site. During 2004 and 2005, NRC staff worked with the Idaho Department of Environmental Quality and the U.S. Environmental Protection Agency (EPA) to establish an approach for remediation of the site.

EPA agreed to perform remediation activities at the SRUD site in accordance with the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601(14) and (33). A Removal Action Work Plan (ADAMS No. ML072880344), which specified its step-by-step process for conducting cleanup activities at the SRUD site, was developed by the EPA and approved by the NRC.

The EPA's Removal Action Work Plan included the removal and disposal of hazardous chemical and radiological contaminants that may pose a threat to workers, public health and welfare, and the environment. EPA's radiological release criteria was based on a recreational use scenario for the site.

Implementation of the EPA's work plan began on October 23, 2007, and was completed on June 3, 2008. Contaminated waste material above the unrestricted release criteria was shipped to licensed disposal sites. EPA's work activities summary report is documented in the Final Removal Action Report, dated September 12, 2008 (ADAMS No. ML082590288).

The NRC staff conducted confirmatory radiological surveys of site structures and land areas and collected soil samples for analysis by the NRC's independent laboratory contractor to verify results obtained by EPA. Confirmatory surveys consisted of surface scans for alpha, beta and gamma radiation, direct measurements for total alpha and beta activity, collection and analysis of soil samples for thorium and uranium, and collection of smear samples for determining removable radioactivity levels. The survey information and sample results are documented in Inspection Reports 040–03400/07–01 (ADAMS No. ML080320117) and 040–03400/08–01 (ADAMS No. ML082180190). The NRC performed an independent dose assessment using the recreational scenario employed by the EPA to evaluate the EPA's cleanup criteria and evaluate the condition of the SRUD site.

Based on the considerations discussed above, the Commission has concluded that: (1) Radioactive material above release limits has been properly disposed; (2) reasonable effort has been made to eliminate residual radioactive contamination; and (3) FSSs and associated documentation demonstrate that the site is suitable for unrestricted release in accordance with the criteria in 10 CFR Part 20, Subpart E. Therefore,

the Salmon River site near North Fork, Idaho is suitable for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Additional relevant information is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency-wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 19th day of September 2008.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–22908 Filed 9–29–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0232; OPM Form 1673]

Submission for OMB Review: Comment Request for Review of an Expiring Information Collection: Procedures for Submitting Compensation and Leave Claims

AGENCY: U.S. 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 U.S. Office of Personnel Management (OPM) submitted to the Office of Management and Budget (OMB) a request for review of an expiring information collection. This information collection, ''Procedures for Submitting Compensation and Leave Claims'' (OMB Control No. 3206–0232; OPM Form 1673), is used to collect information from current and former Federal civilian employees who are submitting a claim for compensation and/or leave. OPM needs this information in order to adjudicate the claim.

We received no comments on our 60-day notice on this information collection (OPM Form 1673), published in the **Federal Register** on June 17, 2008.

Approximately 80 claims are submitted annually. It takes approximately 60 minutes to complete the form. The annual estimated burden is 80 hours.

For copies of this proposal, contact Margaret A. Miller by telephone at (202) 606–2699, by FAX at (202) 418–3251, or by e-mail at *Margaret.Miller@opm.gov.* Please 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:

Robert D. Hendler, Program Manager, Center for Merit Systems Compliance, Division for Human Capital Leadership and Merit System Compliance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415; and

John W. Barkhamer, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–22974 Filed 9–29–08; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2008–25; Order No. 110]

Global Expedited Package Service Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service Global Expedited Package Service negotiated service agreement. This action is consistent with changes in a recent law governing postal operations.

DATES: Comments are due October 2, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 22, 2008, the Postal Service filed a notice, which has been assigned to Docket No. CP2008–25.[1] This Notice announces an individual negotiated service agreement, namely, a specific Global Expedited Package Service (GEPS) contract the Postal Service has entered into with an individual mailer. The Postal Service believes that it is functionally equivalent to the Global Expedited Package Services 1 (GEPS 1) product established in Docket No. CP2008–5.

Docket No. CP2008–5. The Governor's Decision supporting the GEPS 1 product was filed in consolidated Docket No. CP2008–5.[2] In Order No. 86, the Commission established GEPS 1 as a product and held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are substantially equivalent to the initial GEPS 1 contract filed in Docket No. CP2008–5.[3] The GEPS 1 product provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI).

Related contract. The Postal Service filed the proposed contract in this docket pursuant to 39 CFR 3015.5, asserting that it is in accord with Order No. 86 and is substantially equivalent to the initial GEPS 1 contract filed with the Commission. *Id.* In support of its filing, the Postal Service also provides the contract and certain supporting material under seal. The Notice contains the Postal Service's arguments that this contract is substantially equivalent and that it exhibits similar cost and market characteristics. Notice at 3–5. The Postal Service also maintains that the contract, by virtue of its terms, fits within the proposed Mail Classification Schedule language for GEPS 1. *Id.* at 2.

While maintaining that the contract is substantially equivalent to the initial GEPS 1 contract, the Postal Service

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, September 22, 2008 (Notice).

[2] Docket No. CP2008–5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

[3] Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 at 7 (Order No. 86) (''The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.'').

notes that the contract may differ in minor respects; for example, prices may vary due to volume commitments, signing dates of the agreements, existence of previous agreements, and other case specific and negotiation related factors. *Id.* at 4–5. The Postal Service maintains, however, that ''[i]ncidental differences to accommodate the respective mailer[] do nothing to detract from the conclusion that the[] agreement[] [is] 'functionally equivalent in all pertinent respects.' '' *Id.* at 5.

The Postal Service asks that the contract be added to the existing GEPS 1 product. *Id.* at 2 and 5. It further notes that the contract is ''set to expire one year after the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, culminating with a favorable conclusion on review by the Commission.'' *Id.* at 2.

II. Notice of Filings

The Commission establishes Docket No. CP2008–25 for review of this contract. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than October 2, 2008.

The Commission appoints Paul L. Harrington to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket No. CP2008–25 for consideration of the matters raised in this docket.

2. Comments on issues in these proceedings are due no later than October 2, 2008.

3. The Commission appoints Paul L. Harrington as Public Representative to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register** .

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–22980 Filed 9–29–08; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, October 1, 2008 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will hear oral argument on an appeal by Gary M. Kornman from an initial decision of an administrative law judge barring him from associating with any broker, dealer, or investment adviser. The law judge based her decision to impose associational bars on Kornman's having been criminally convicted of making a false statement to the Commission in violation of 18 U.S.C. 1001. Issues likely to be considered include whether it is in the public interest to bar Kornman from association with any broker, dealer, or investment adviser.

Item 2: The Commission will hear oral argument on an appeal by Nature's Sunshine Products, Inc. (''Nature's Sunshine'') from an initial decision of an administrative law judge. The law judge found that Nature's Sunshine had violated Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a–1 and 13a–13 by failing to file any annual report on Form 10–K since filing its Form 10–K for the year ended December 31, 2004, and by failing to file any quarterly report on Form 10–Q with financial statements that had been reviewed by a registered independent public accounting firm since filing its Form 10–Q for the quarter ended June 30, 2005. Issues likely to be considered include whether it is necessary or appropriate for the protection of investors to revoke the registration of Nature's Sunshine's common stock.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: September 24, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22830 Filed 9–29–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, September 24, 2008, at 4:30 p.m.

Commissioners, Counsels to the Commissioners, the Acting Secretary to the Commission, and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(8) and (9) and 17 CFR 200.402(a)(8) and (9), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, September 24, 2008, will be: Matters related to the financial markets.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 24, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22858 Filed 9–29–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58625; File No. SR–Amex–2008–51]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Related to Amendments to Rule 991 (Communications to Customers) and Rule 921 (Opening of Accounts)

September 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2008, the American Stock Exchange LLC (the ''Amex'' 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. Amex filed Amendment Nos. 1 and 2 to the proposed rule change on August 22, 2008, and September 5, 2008, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 991 (''Communications to Customers'') to delete references to certain provisions of the Securities Act of 1933 (the ''Securities Act'') that no longer apply to standardized options [4] issued by registered clearing agencies and update and reorganize the rule for greater clarity. In addition, the proposal seeks to amend Amex Rule 921 (''Opening of Account'') in connection with the information member organizations must obtain from customers. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *http://www.amex.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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment Nos. 1 and 2 modified certain definitions in and made non-substantive corrections to proposed Rule 991.

[4] ''Standardized Option'' is defined in Rule 19b–1 under the Exchange Act to mean options contracts trading on a registered national securities exchange, an automated quotation system of a registered national securities association, or a foreign exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission man, by order, designate.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Rule 991 (Communications to Customers)

On December 23, 2002, the Commission published final rules that exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or registered national securities association from the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.[5] Since the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, the Amex proposes to remove elements of the Securities Act that are embedded in Amex Rule 991. In particular, the Exchange proposes to remove all references to a ''prospectus'' from Rule 991. Prospectuses are no longer required for standardized options, and The Options Clearing Corporation (''OCC'') has, in fact, ceased publication of a prospectus.[6] In addition, the proposed amendments would update and reorganize Rule 991. For uniformity, the Financial Industry Regulatory Authority, Inc. and the Chicago Board Options Exchange, Inc. have filed proposed rule amendments with the Commission to implement similar rule language and format changes.[7]

i. Deletion of Certain Provisions of Rule 991

Amex Rule 991 contains a number of references to a prospectus and other Securities Act requirements. The Exchange proposes to delete the following from Rule 991:

- Rule 991(a)(iv), which references the Securities Act prospectus definition;
- Rule 991(d), which incorporates Securities Act principles in that it prohibits written material concerning options (*i.e.*, an offering) from being furnished to any person who has not previously or contemporaneously received the current ODD;
- Rule 991(e)(ii), which defines the term ''Educational Material;'' [8]
- Commentary.02A to Rule 991, which outlines what is permitted in an ''Advertisement;'' [9] and
- Commentary.03 to Rule 991, which concerns educational material.[10]

ii. Re-designation of Rule 991(a) to Proposed Rule 991(d) and Related Amendments

Amex Rule 991(a) currently provides an outline of the ''General Rule'' for options communications. The Exchange proposes to re-designate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in current Commentary.01 to Rule 991 into proposed Rule 991(d). In addition, proposed Rule 991(d)(iii) would amend Rule 991(a)(iii) by clarifying the types of cautionary statements and caveats that are prohibited. As previously noted, the Amex proposed to delete Rule 991(a)(iv).

iii. Proposed Amendments to Rule 991(b)

Amex proposes to amend Rule 991(b) to include the types of communications proposed to be added to the definition of ''Options Communications'' in proposed Rule 991(a). Proposed Rule 991(b)(ii) and (b)(iii) would also amend the current requirement to obtain advanced approval by a Registered Options Principal (''ROP'') for most options communications by exempting certain options communications, defined as ''Correspondence'' and ''Institutional Sales Material.'' Specifically, proposed Rule 991(b)(ii) would exempt Correspondence from the pre-approval requirement unless the Correspondence is distributed to 25 or more existing retail customers within any 30 calendar day period, and make any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence would be subject to the supervision and review requirements of Rule 922. Proposed Rule 991(b)(iii) would exempt Institutional Sales Material from the pre-approval requirement if the material is

[5] *See* ''Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule,'' Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).

[6] The options disclosure document (the ''ODD'') prepared in accordance with Rule 9b–1 under the Exchange Act is not deemed to be a prospectus. 17 CFR § 230.135b. *See, e.g.*, Securities Act Release No. 8049 (Dec. 21, 2001), 67 FR 228 (Jan. 2, 2002).

[7] *See* Exchange Act Release No. 57720 (Apr. 25, 2008) 73 FR 24332 (May 2, 2008) (SR–FINRA–2008–13) and Exchange Act Release No. 58138 (Jul. 10, 2008), 73 FR 20886 (Jul. 16, 2008) (SR–CBOE–2007–30).

[8] This paragraph essentially incorporates language of Rule 134a under the Securities Act. While this amendment would eliminate the separate educational material category, as discussed below, the Exchange also proposes to revise the definition of Sales Literature to include educational material.

[9] This paragraph essentially incorporates language of Rule 134 under the Securities Act.

[10] *See* note 7, *supra*.

distributed to ''qualified investors'' as defined in Section 3(a)(54) of the Exchange Act.[11]

Pre-approval by a ROP would, however, be required with respect to independently prepared reprints. In addition, proposed Rule 991(b)(iv) would require that firms retain options communications in accordance with the recordkeeping requirements of Rule 17a–4 under the Exchange Act.[12] The proposed rule would also require that firms retain other related documents in the form and for the time periods required for options communications by Rule 17a–4.

iv. Proposed Amendments to Rule 991(c)

Amex Rule 991(c) currently requires members and member organizations to obtain approval for every advertisement and all educational material from the Exchange. This requirement applies regardless of whether the options communications are used before or after delivery of a current ODD. The Exchange proposes to amend this provision to require approval by the Exchange only with respect to communications used prior to the delivery of a current ODD. The Exchange's pre-approval requirement for options communications used subsequent to the delivery of the ODD would be eliminated because the ODD should help alert the customer to the characteristics and risks associated with trading in options and because Rule 991(b) requires the ROP of a member organization to pre-approve options communications, subject to exceptions for ''Correspondence'' and ''Institutional Sales Material.'' Rule 991(c) would also be amended to include the types of communications added to the definition of ''Options Communications'' in proposed Rule 991(a).

v. Re-designation of Rule 991(e) as Proposed Rule 991(a) and Related Amendments

Rule 991(e) currently defines the terms used in Rule 991. The Amex proposes to re-designate paragraph (e) as paragraph (a). The Exchange also proposes to amend the definition of ''Options Communications'' in proposed Rule 991(a) to expand the types of communications governed by Rule 991 to include independently prepared reprints and other communications between a member or member organization and a customer. The Exchange proposes to amend the definitions of ''Advertisement'' and ''Sales Literature''; and define ''Correspondence,'' ''Institutional Sales Material,'' ''Public Appearances'' and ''Independently Prepared Reprints'' to clarify the rule. In addition, as previously noted, Amex proposes to delete the definition of ''Educational Material.''

vi. Proposed Rule 991(e)

Proposed Rule 991(e) would set forth (i) standards for options communications that are not preceded or accompanied by an ODD and (ii) standards for options communications used prior to delivery of an ODD. These requirements generally clarify and restate the requirements contained in current Commentary .02 to Rule 991.

vii. Related Commentaries

Proposed Rule 991(e)(i)(B) would require options communications to contain contact information for obtaining a copy of the ODD. Proposed Commentary .01 to Rule 991 would include the provisions found in current Commentary .02A to Rule 991 regarding how this requirement may be satisfied. In addition, as noted above, the provisions of current Commentary .01 to Rule 991 regarding limitations on the use of options communications would be incorporated into proposed Rule 991(d).

As previously noted, the provisions of current Commentary .02 to Rule 991 that outline what is permitted in an advertisement would be deleted, and the provisions relating to standards for options communications used prior to delivery of the ODD would be incorporated into proposed Rule 991(e)(ii).

Current Commentary .03 to Rule 991 regarding educational materials also would be deleted, as noted above.

Current Commentary .04 to Rule 991 sets forth the standards applicable to Sales Literature. Current Commentary .04A sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data will be supplied upon request. The Exchange proposes to re-designate current Commentary .04A as proposed Rule 991(d)(vii).

Current Commentary .04B to Rule 991 relates to standards for Sales Literature that contain projected performance figures. Current Commentary .04C relates to standards for Sales Literature that contains historical performance figures. The Exchange proposes to re-designate current Commentary .04B as proposed Commentary .02 to Rule 991 and current Commentary .04C as proposed Commentary .03 to Rule 991.

Rule 991 currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange proposes to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options.[13]

A notice providing the name and address of a person from whom the ODD may be obtained would be required in sales literature that does not contain a recommendation of past or projected performance figures. Because Amex is proposing to merge educational material into the sales literature category,[14] this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

The Exchange proposes to re-designate current Commentary .04D to Rule 991 as proposed Commentary .04 to Rule 991. The Exchange proposes to delete current Commentaries .04E, F and G to Rule 991. The Exchange believes Commentaries .04E and F are unnecessary because worksheets are included in the definition of Sales Literature. In addition, the Exchange believes Commentary .04G is no longer necessary because the Exchange is proposing to clarify the recordkeeping requirements applicable to options communications in proposed Rule 991(b)(iv).

b. Rule 921 (Opening of Accounts)

The proposal would also amend Rule 921 in connection with the opening of options accounts. Currently, Commentary .01 to Rule 921 requires a member organization to obtain certain information about its options customers in order to comply with the due diligence requirement in opening a new account under Rule 921(c). In order to conform to the requirements of Rule 17a–3(a)(17) under the Exchange Act, the proposed amendments would require that in addition to all the essential information to determine suitability, a member organization must

[11] *See* 15 U.S.C. § 78c(a)(54).

[12] 17 CFR § 240.17a–4. More specifically, Rule 17a–4(b)(4) requires that a broker-dealer retain ''originals of all communications received and copies of all communications sent * * * including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.''

[13] *See* proposed Rule 991(e)(i)(C) and proposed Commentaries .02 and .03 to Rule 991.

[14] *See* proposed Rule 991(a)(ii).

also obtain the customer's name, Tax Identification Number, address, and telephone number.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6 of the Act,[15] in general, and further the objectives of Section 6(b)(5),[16] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between the Amex and other SRO options communications rules and conforming Rule 921 to the requirements of Rule 17a–3(a)(17) under the Exchange Act. The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the proposed amendments to Amex Rule 991 reflect amendments to the Securities Act that generally exempt standardized options, and will update and reorganize the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 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

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 Exchange 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–Amex–2008–51 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–Amex–2008–51. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–51 and should be submitted on or before October 21, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22962 Filed 9–29–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58626; File No. SR–FINRA–2008–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, To Amend the By-Laws of FINRA Regulation To Realign the Representation of Industry Members on the National Adjudicatory Council To Follow More Closely the Categories of Industry Representation on the FINRA Board

September 23, 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 September 8, 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. On September 17, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the By-Laws of FINRA's regulatory subsidiary (''FINRA Regulation'') to realign the representation of industry members on the National Adjudicatory Council (''NAC'') to follow more closely the industry representation on the FINRA Board of Governors (''FINRA Board''), to eliminate the Regional Nominating Committees, to transfer such committees' responsibilities for NAC industry appointments to the FINRA Nominating Committee (''Nominating Committee''), and to change the name of ''NASD Regulation'' and ''NASD'' to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''FINRA Regulation'' and ''FINRA'' respectively. The text of the proposed rule change is available at FINRA, on its Web site (*http://www.finra.org*), 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, 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

Background on FINRA and Its Regulatory Subsidiary

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes.[3] The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.

FINRA Regulation (formerly known as NASD Regulation) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws.

The proposed rule change would modify the FINRA Regulation By-Laws to: Restructure the industry representation on the NAC to parallel the firm-size criteria for industry representation on the FINRA Board; modify the nomination process for certain industry member seats on the NAC by using the Nominating Committee and discontinuing the Regional Nominating Committees; and adopt conforming changes to reflect the corporate name change and similar matters.[4]

The National Adjudicatory Council

The NAC is appointed pursuant to the FINRA Regulation By-Laws to review all disciplinary decisions issued by Hearing Panels and presides over disciplinary matters that have been appealed to or called for review by the NAC. The NAC also reviews statutory disqualification matters and considers appeals of membership proceedings and exemption requests.[5]

Under current FINRA Regulation By-Law provisions, the NAC must consist of no fewer than 12 and no more than 14 members.[6] The number of non-industry members, including at least three public members, must equal or exceed the number of industry members.[7] Since 1999, each of five geographic regions, which had been established by the NASD Board of Governors, has been represented on the NAC. Non-industry members of the NAC and two ''at-large'' industry members currently are nominated to serve on the NAC by the Nominating Committee and then appointed by the FINRA Regulation Board.[8] The five industry members of the NAC who are drawn from the five geographic regions are first selected through Regional Nominating Committees (through either an uncontested or a contested nomination process), then nominated by the Nominating Committee, and finally appointed by the FINRA Regulation Board.

Discussion of Changes to the NAC Election Process

The proposed rule change would amend Article I (Definitions), Article V (National Adjudicatory Council), and Article VI (National Adjudicatory Council Regional Nominations for Industry Members) of the FINRA Regulation By-Laws to replace the current regionally based approach for appointing industry representatives to the NAC with a process that is based on firm size and is similar to the FINRA Board's approach.[9] The NAC's regionally based election process is a legacy NASD practice that no longer parallels the governance structure of the FINRA Board. The proposed rule change would replace the five regionally based industry members of the NAC with two small firm, one mid-size firm, and two large firm industry representatives. The make-up of the NAC under the proposed rule change would follow more closely the current make-up of the FINRA Board.

The restructured NAC would therefore consist of 14 members, including seven industry members, two of whom are ''at large'' and five of whom are designated specifically as representatives of large firms, mid-size firms, and small firms, and seven non-industry members, three of whom are public.[10] The tenure of NAC members is generally three years and the terms of the NAC members are staggered. The proposal would not disrupt the process

[3] *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR–NASD–2007–023).

[4] The proposed rule change would revise, delete, and/or renumber various provisions of the FINRA Regulation By-Laws. Renumbered sections are referred to herein as ''proposed FINRA Regulation By-Laws.'' All other sections (that is, sections for which new numbering did not result from the proposed revisions) are referred to as ''current FINRA Regulation By-Laws.''

[5] *See* current FINRA Regulation By-Laws, Article V, Section 5.1 (Appointment and Authority).

[6] The 2008 NAC consists of 14 members, and the NAC has had no fewer than 14 members consistently for many years. To reflect past practices, the proposed rule change would eliminate the 12 to 14 member range currently indicated in the FINRA Regulation By-Laws and state instead that the NAC shall consist of 14 members, divided equally between industry and non-industry. The proposal would eliminate the concept of non-industry members exceeding industry members and state simply that non-industry NAC members will equal industry NAC members. Given that the population of the NAC will be 14, its balanced nature can be achieved with an equal industry/non-industry composition.

[7] *See* current FINRA Regulation By-Laws, Article V, Section 5.2 (Number of Members and Qualifications).

[8] Consistent with Article V of the FINRA Regulation By-Laws, the current 14-member NAC includes seven industry and seven non-industry members. Five of the industry NAC members represent the five geographic regions. The remaining two industry seats are ''at-large'' seats, which NASD historically used and FINRA currently uses to add balance to the types of firms being represented on the NAC.

[9] The FINRA Board consists of eleven Public Governors (who are appointed), ten Industry Governors (seven of whom are elected by industry members), the current Chief Executive Officer (''CEO'') of NYSE Regulation, and the current CEO of FINRA. The ten Industry Governors include: (a) Three elected Governors who are registered with member firms that employ 500 or more registered persons (Large Firm Governors); (b) one elected Governor who is registered with a member firm that employs at least 151 and no more than 499 registered persons (Mid-Size Firm Governor); (c) three elected Governors who are registered with member firms that employ at least one and no more than 150 registered persons (Small Firm Governors); (d) one appointed Governor who is associated with a floor member of the New York Stock Exchange; (e) one appointed Governor who is associated with an independent contractor financial planning member firm or an insurance company affiliate; and (f) one appointed Governor who is associated with an affiliate of an investment company. *See* FINRA By-Laws, Article VII (Board of Governors).

[10] A public member of the NAC has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act.

of approximately one-third of the NAC members completing their service in a particular year and being replaced with newly appointed NAC members. The proposal would result in a Small Firm and a Large Firm NAC Member joining the NAC near the beginning of 2009; a Mid-Sized Firm NAC Member joining in 2010; and a Small Firm and Large Firm NAC Member joining in 2011. The proposed selection process would allow for the service of NAC members with knowledge, impartiality, and judicial temperament, while maintaining the same level of indirect representation of FINRA's membership.

In conjunction with eliminating the regionally based criteria for identifying industry NAC members, the proposed rule change also would simplify the NAC appointment process for industry representatives and follow more closely the procedures for electing industry members of the FINRA Board. The process proposed would eliminate the five Regional Nominating Committees and have the Nominating Committee perform their functions instead. Rather than relying on Regional Nominating Committees to first identify possible industry candidates before submission of the candidates to the Nominating Committee and the FINRA Regulation Board, the Nominating Committee would identify and solicit candidates for all NAC seats, including the five industry-member positions that are based on firm size.[11] The Nominating Committee would be free to consult with or receive recommendations for industry NAC members from other FINRA committees, such as the District Nominating Committees, before communicating its nominations to the FINRA Board.

The proposed rule change would continue the current process of allowing individuals who seek to serve on the NAC but were not nominated, known as additional candidates, to gather petitions in support of their candidacy and potentially compete in a contested election. Additional candidates would petition to be considered as Small, Mid-Size, or Large Firm NAC Members based on the size of the firm with which they are registered.

Under the proposal, additional candidates would be able to qualify for a contested election by gathering petitions from three percent of the firms in their size category, which is lower than the ten percent requirement additional candidates currently need to gather when they seek to qualify for a regional NAC seat.[12] In the event of a contested election, FINRA members would have an opportunity to vote for a NAC candidate based on firm size.[13] Specifically, small, mid-size, or large firms would vote for NAC candidates only if the contested election was for a NAC seat designated for a firm of corresponding size.

The proposed rule change would ensure that the winner of a contested election serves on the NAC. While all NAC members would continue to be recommended initially by the Nominating Committee and appointed by the FINRA Board,[14] the candidate who receives the most votes in any contested election for a Small, Mid-Size, or Large Firm NAC Member seat would be required under the FINRA Regulation By-Laws to be appointed to the NAC.[15] The current By-Law section that discusses the procedure in the event that the Regional Nominating Committee's nominee is rejected by the National Nominating Committee would accordingly be deleted. The proposal would not change the NAC selection process if no additional candidates reach the threshold to qualify for a contested election. As in the past when there are no additional candidates, the industry NAC members selected by the Nominating Committee would not have a contested election and would be recommended for appointment to the NAC.[16]

To verify that a NAC nominee or candidate would satisfy the definition of an Industry, Small Firm, Mid-Sized Firm, Large Firm, Non-Industry, or Public Member of the NAC, the proposed rule change would authorize the FINRA Secretary to collect information from candidates as is reasonably necessary to serve as the basis for such a determination.[17]

The proposed rule change would modify slightly the provision that restricts NAC members and certain committees from communicating in an official capacity in support of a candidate in a contested election. The current rules, which permit individuals who are Directors or NAC or other committee members to communicate their views regarding a candidate in an individual capacity, would remain the same. The modification would specify the narrow circumstances under which the Nominating Committee may support its candidate by sending a maximum of two mailings in support of its nominee.[18] The proposal would clarify that this limited support is available during contested NAC elections by referring to support allowed ''under these By-Laws,'' which includes the support allowed under Article IV, Section 4.16.[19]

The proposed rule change would designate the Secretary of FINRA, instead of the FINRA Regulation Secretary, as the person who would send notice to FINRA members announcing a contested NAC election; assist in preparing ballots; prepare a list of FINRA members eligible to vote; arrange for the location for counting of ballots by an independent agent; resolve ballots that were set aside, if necessary; extend a time period regarding elections for good cause; and similar duties.[20] The proposal designates the FINRA Secretary because this office fulfills the same role when FINRA holds elections for the Board of Governors.

As a result of the NAC's restructuring, FINRA would continue to promote fair representation of its members because seven of the NAC seats will be drawn from members of the industry and the industry candidates for five of those seats will be announced to the membership and are subject to a potential election by member firms of a similar size.

---

[11] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments).

[12] *Compare* current FINRA Regulation By-Laws, Article VI, Section 6.15 (Requirement for Petition Supporting Additional Candidate) *with* proposed FINRA Regulation By-Laws, Article VI, Section 6.2 (Designation of Additional Candidates).

[13] *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.3 (List of FINRA Members Eligible to Vote) and Article VI, Section 6.7 (Ballots).

[14] The seven non-industry members and two at-large industry members would continue to follow the nomination and Board appointment process currently employed for non-industry and at-large industry NAC members.

[15] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments) and 5.5 (Rejection of Nominating Committee Nominee).

[16] The proposed FINRA Regulation By-Laws retain the possibility that the Nominating Committee could propose two or more candidates for a single open small, mid-size, or large firm NAC seat. *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.5 (Notice of Contested Nomination). In such a case, there would be a contested election. The proposed rule change would clarify that only when the Nominating Committee nominates two or more candidates for the same open seat would the Nominating Committee trigger a contested election.

[17] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.4 (Nomination Process).

[18] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.16(b) (Communication of Views Regarding Contested Election or Nomination). Section 4.16(b) would also mirror the language of the FINRA By-Law provision that allows, in contested elections, the appropriate FINRA committee to communicate a responsive message in reply to an additional candidate's communication. *See* FINRA By-Laws, Article VII, Section 11(b) (Communication of Views).

[19] *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.6 (Administrative Support).

[20] *See* proposed FINRA Regulation By-Laws, Article VI, Sections 6.5, 6.7, 6.8, 6.10, 6.11, 6.13, and 6.14.

In addition, the rule change would indicate in proposed Article V, Section 5.10 (Filling of Vacancies) that the NAC may continue to function while FINRA fills a vacancy on the NAC. The proposal also would incorporate the concept into Section 5.10 from proposed Section 5.9 (Disqualification), which specifies that a vacancy on the NAC lasting six months or less will not cause a violation of the compositional requirements of current Article V, Section 5.2 (Number of Members and Qualifications).

The proposed rule change would amend the FINRA Regulation By-Law provisions regarding resignation, removal, appointment, and disqualification of NAC members and the NAC's authority to act on FINRA's behalf by designating the FINRA Board as the body authorized to oversee the NAC.[21] The FINRA Board has long had explicit authority under Articles XII and XIII of its By-Laws to establish procedures for disciplinary proceedings and to impose sanctions in certain circumstances, and has consistently relied on the NAC to render judgment on disciplinary matters, including imposing sanctions. The proposal would reinforce these roles by simplifying the FINRA Board's relationship with the NAC and establishing directly with the FINRA Board the authority to remove all NAC members (for refusal, failure, neglect, or inability to discharge duties), accept their resignations, appoint them, and declare them disqualified. Moreover, the FINRA Board's direct authority over resignation, removal, appointment, and disqualification would logically extend the FINRA Board's existing authority to review the substance of the NAC's appellate decisions, which exists through the FINRA Board's discretionary power to call a case for review by the FINRA Board.[22] FINRA believes that the proposed rule change will benefit the appellate portion of the disciplinary process by extending the FINRA Board's oversight of the NAC's members.

The proposed rule change would amend current Article V, Section 5.2 of the FINRA Regulation By-Laws (Number of Members and Qualifications) to eliminate the reference that the Chair of the NAC shall automatically serve as a Director of the FINRA Regulation Board for a one-year term. As a result of the NASD and NYSE consolidation, the NAC Chair's automatic service on the FINRA Board of Governors was previously eliminated in 2007. Accordingly, the NAC Chair no longer automatically has the prerequisite requirement to be appointed to the FINRA Regulation Board.[23]

Conforming Changes Relating to the New FINRA Name

The proposed rule change would make certain non-substantive changes to several articles of the FINRA Regulation By-Laws as follows:

- ''The NASD'' or ''NASD'' is replaced with ''FINRA'' or ''the Corporation'';
- ''NASD Regulation'' is changed to ''FINRA Regulation'';
- ''the Rules of the Association'' is replaced with ''the Rules of the Corporation;'' and
- ''National Nominating Committee'' is replaced with ''Nominating Committee.''

The proposed rule change would modify the term ''Industry Member'' in the definitional section of FINRA Regulation's By-Laws, Article I, by limiting the look-back test that characterizes NAC or committee members as industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, within the past twelve months. The current provision uses a three year look-back test. This proposed change would make the definition of ''Industry Member'' for NAC and other committee members consistent with the ''Industry Governor'' and ''Industry committee member'' definitions in the FINRA By-Laws.[24]

The proposal would also add the term ''independent director'' to the portion of the definition of ''Industry Member'' that excludes outside directors of a broker or dealer. Independent director is synonymous with outside director, but would be added to the exclusionary clause to harmonize the FINRA Regulation By-Laws with the FINRA By-Laws' use of the term ''independent director'' when defining an Industry Governor. In addition, the definition of ''Public Director'' and ''Public Member,'' which refers to NAC or committee members, would be modified to clarify that, for example, a Public Director's service on FINRA Regulation's Board or a Public Member's service on the NAC does not disqualify that person from satisfying the definition of Pubic Director or Public Member.[25]

The proposed rule change would reflect that FINRA Regulation's Delaware registered agent is Corporate Creations Network Inc.

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,[26] 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; and Section 15A(b)(4) of the Act,[27] which requires that FINRA rules are designed to assure a fair representation of FINRA's members in the administration of its affairs. The composition of the FINRA Board has previously been found to meet the statutory requirement, and FINRA believes that the proposed rule change will align the representation of industry members on the NAC to follow more closely the industry representation on the FINRA Board.

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 reason for so finding or (ii) as to which FINRA consents, the Commission will:

A. By order approve such proposed rule change; or

[21] *See* current FINRA Regulation By-Laws, Article V, Sections 5.1 (Appointment and Authority), and proposed Sections 5.7–5.9.

[22] *See* Rule 9351.

[23] Additional changes to the FINRA Regulation By-Laws regarding the FINRA Regulation Board and capital stock will be proposed by FINRA in a related proposed rule change that FINRA anticipates filing in the near future.

[24] *See* FINRA By-Laws, Article I(t).

[25] *See* proposed FINRA Regulation By-Laws, Article I(hh) and (ii).

[26] 15 U.S.C. 78o–3(b)(6).

[27] 15 U.S.C. 78o–3(b)(4).

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–2008–046 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–2008–046. 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 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–2008–046 and should be submitted on or before October 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22927 Filed 9–29–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58622; File No. SR–NASDAQ–2008–072]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish a PORTAL Reference Database and Related Fees

September 23, 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 September 16, 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. 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 establish a PORTAL Reference Database. Nasdaq will make the proposed rule change effective immediately upon approval.

The text of the proposed rule change is below. Proposed new language is italicized.[3]

* * * * *

7050. PORTAL Reference Database

The following charges shall apply to access to the PORTAL Reference Database:

(1) *For PORTAL data for 2008 and future years, the annual fee is:*

1–20 Users	*$20,000*
21 to 100 Users	*$50,000*
101+ Users	*$100,000*

(2) *For PORTAL data for 1990 to 2007, the fee for each year of reference data shall be:*

1–20 Users	*$20,000 (not to exceed $200,000 for access to all PORTAL historical data files from 1990 to 2007).*
21 to 100 Users	*$50,000 (not to exceed $500,000 for access to all PORTAL historical data files from 1990 to 2007).*
101+ Users	*$100,000 (not to exceed $1,000,000 for access to all PORTAL historical data files from 1990 to 2007).*

* * * * *

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

Background

The National Association of Securities Dealers, Inc. (''NASD'') created the PORTAL Market in 1990,[4] simultaneously with the SEC's adoption of Rule 144A,[5] to be a new trading system for the purpose of quoting, trading, and reporting trades in securities deemed eligible for resale by Qualified Institutional Buyers under Rule 144A. Rule 144A provides an exemption from registration under Section 5 of the Securities Act[6] for resales of privately placed securities to investors that meet the eligibility requirements of being a qualified institutional buyer (''QIB'') under Rule 144A(a)(1),[7] *i.e.*, institutional investors that in the aggregate own or invest on a discretionary basis at least $100 million in securities and broker/dealers that in the aggregate own or invest on a discretionary basis at least $10 million in securities. The PORTAL Market did

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com*.

[4] Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990) (the ''original PORTAL rule filing'').

[5] Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990).

[6] 17 [sic] U.S.C. 77e.

[7] 17 CFR 230.144A(a)(1).

not develop as anticipated.[8] For many years, the sole function of the NASD related to the PORTAL market was to review whether an issue of privately placed securities met the eligibility requirements of Rule 144A, thereby qualifying the securities for DTC book-entry services.

The staff of Nasdaq has historically had responsibility for review of PORTAL applications to determine the eligibility of securities and, originally, PORTAL participants (including broker/dealers and investors). Upon the separation of Nasdaq from the NASD and the approval of Nasdaq as a registered national securities exchange under Section 6 of the Act, the review functions for PORTAL market eligibility were retained by Nasdaq and the PORTAL Market Rules in the NASD Rule 5300 Series became the Nasdaq Rule 6500 Series.[9] The NASD continued, however, to regulate trading reporting for PORTAL-designated securities.

Since 1990, Nasdaq has designated over 26,000 equity and debt securities as being PORTAL-eligible. This designation process includes the submission and review of offering documents and memorandum related to the restricted nature of the security and the completion of a PORTAL market application form.

PORTAL Reference Database

As part of Nasdaq's continuing efforts to enhance the transparency and efficiency of trading in Rule 144A issues, Nasdaq has created and intends to make publicly available, for a fee, a consolidated electronic reference database of information culled from PORTAL offering documents and applications submitted to Nasdaq since 1990. The database is fully electronic and allows users to determine, in addition to other information, a PORTAL issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation. As new issues seek PORTAL designation, they too will be added to the database. Access to the database will open to all market participants.

As set forth in the proposed rule text, pricing for access to the database will be tiered based on the number of users authorized for access and the number of the years for which access is desired. There will be no pro-rating of these annual fees and all parties will pay a full year's fee regardless of when they elect to seek access to the database. The total cost of access to the full database will, however, be capped based on the number of users at a particular firm. Nasdaq believes that this pricing structure will allow users to better align and control their costs of access with their data usage.

Nasdaq believes that PORTAL reference database will materially improve the availability of historical information about issuances of restricted equity and debt and provide a more reliable background upon which market participants can make investment decisions regarding such securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq notes that creation of the PORTAL reference database required the retrieval, organization, and review of hundreds of thousands of pages of hard-copy documents as well as the conversion of retrieved information into electronic form, and its subsequent importation into the database itself. In addition, the database also required programming an information entry and retrieval protocol. On an ongoing basis, Nasdaq will also incur hardware and software costs for the maintenance and storage of PORTAL reference data.

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, as amended.

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–NASDAQ–2008–072 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–NASDAQ–2008–072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for

[8] For more information related to the background of The PORTAL Market, *see* Securities Exchange Act Release No. 55669 (April 25, 2007); 72 FR 23874 (May 1, 2007).

[9] Securities Exchange Act Release No. 53128 (Jan. 13, 2006); 71 FR 3550 (Jan. 23, 2006).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

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–2008–072 and should be submitted on or before October 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22859 Filed 9–29–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11448]

Arkansas Disaster #AR–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–1793–DR), dated 09/18/2008.

Incident: Severe storms and flooding associated with Hurricane Gustav.

Incident Period: 09/02/2008 through 09/08/2008.

Effective Date: 09/18/2008.

Physical Loan Application Deadline Date: 11/17/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/18/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/18/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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:

Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Conway, Dallas, Drew, Garland, Grant, Hot Spring, Lincoln, Montgomery, Perry, Prairie, Saline, Van Buren.

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Arkansas, Cleburne, Desha, Faulkner, Howard, Jefferson, Nevada, Ouachita, Pike, Polk, Pope, Pulaski, Scott, Searcy, Stone, Union, Yell.

Louisiana: East Carroll, Morehouse, Union, West Carroll.

Mississippi: Bolivar, Issaquena, Washington.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and economic injury is 11448.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–22902 Filed 9–29–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11449 and #11450]

Indiana Disaster #IN–00026

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 Indiana (FEMA–1795–DR), dated 09/23/2008.

Incident: Severe storms and flooding.

Incident Period: 09/12/2008 and continuing.

Effective Date: 09/23/2008.

Physical Loan Application Deadline Date: 11/24/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/23/2008, 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):

La Porte, Lake, Porter.

Contiguous Counties (Economic Injury Loans Only):

Indiana: Jasper, Newton, St Joseph, Starke.

Illinois: Cook, Kankakee, Will.

Michigan: Berrien.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
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 114496 and for economic injury is 114500.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–22901 Filed 9–29–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 6380]

60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR), OMB Control Number 1405–0050

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and

[12] 17 CFR 200.30–3(a)(12).

Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR).
- *OMB Control Number:* 1405–0050.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of the Procurement Executive (A/OPE).
- *Form Number:* N/A.
- *Respondents:* Any business, other for-profit, individual, not-for-profit, or household organizations wishing to receive Department of State contracts.
- *Estimated Number of Respondents:* 3,166.
- *Estimated Number of Responses:* 3,166.
- *Average Hours per Response:* Varies.
- *Total Estimated Burden:* 275,970.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from September 30, 2008.

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

- *E-mail: LatvanasBA@state.gov*. You must include the information collection title and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Barbara Latvanas, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 900, State Annex Number 27, Washington, DC 20522.
- *Fax:* 703–875–6155.
- *Hand Delivery or Courier:* Barbara Latvanas, Procurement Analyst, Department of State, Office of the Procurement Executive, 1000 Wilson Boulevard, Suite 900, Arlington, VA 22209. You must include the information collection title and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Barbara Latvanas, Procurement Analyst, Office of the Procurement Executive, Department of State, Washington, DC 20522, who may be reached on 703–516–1755.

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: This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which bids or proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to the contract; dealing with unsatisfactory performance; issuing payments to the contractor; and closing out the contract upon its completion.

Methodology: Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or e-mail), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit information, on an as-needed basis, and relate to the occurrence of specific circumstances.

Dated: September 23, 2008.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. E8–22993 Filed 9–29–08; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6379]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2010) Visa Program

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: This public notice provides information on how to apply for the DV–2010 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended (8 U.S.C. 1151, 1153, and 1154(a)(1)(I)).

Instructions for the 2010 Diversity Immigrant Visa Program (DV–2010)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) that amended INA 203 provides for a class of immigrants known as ''diversity immigrants.'' Section 203(c) of the INA provides a maximum of 55,000 Diversity Visas (DV) each fiscal year to be made available to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for Diversity Visas. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the U.S. over the period of the past five years. Within each region, no one country may receive more than seven percent of the available Diversity Visas in any one year.

For DV–2010, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants to the U.S. in the previous five years: Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.

For DV–2010, Russia has returned to the list of eligible countries. Kosovo has also been added to the list of eligible countries. No countries have been removed from the list of eligible countries for DV–2010.

The Department of State implemented the electronic registration system beginning with DV–2005 in order to make the Diversity Visa process more efficient and secure. The Department utilizes special technology and other means to identify those who commit

fraud for the purposes of illegal immigration or who submit multiple entries. For DV–2010, for the first time, those who submit entries may check the status of entries online and determine whether their entries are selected or not selected. Successful entrants will continue to receive notification letters by mail.

Diversity Visa Registration Period

Entries for the DV–2010 Diversity Visa Lottery must be submitted electronically between noon, Eastern Daylight Time (EDT) (GMT–4), Thursday, October 2, 2008 and noon, Eastern Standard Time (EST) (GMT–5) Monday, December 1, 2008. Applicants may access the Electronic Diversity Visa Entry Form (E-DV) at *http://www.dvlottery.state.gov* during the registration period. Paper entries will not be accepted. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in Web site delays. No entries will be accepted after noon, EST, on December 1, 2008.

Requirements for Entry

To enter the DV lottery, you must be a native of one of the listed countries. See ''List of Countries by Region Whose Natives Qualify.'' In most cases this means the country in which you were born. However, there are two other ways you may be able to qualify. First, if you were born in a country whose natives are ineligible but your spouse was born in a country whose natives are eligible, you can claim your spouse's country of birth provided both you and your spouse are on the selected entry, are issued visas and enter the U.S. simultaneously. Second, if you were born in a country whose natives are ineligible, but neither of your parents was born there or resided there at the time of your birth, you may claim nativity in one of your parents' country of birth if it is a country whose natives qualify for the DV–2010 program.

To enter the lottery, you must meet either the education *or* work experience requirement of the DV program. You must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; OR, two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's *O*Net OnLine* database will be used to determine qualifying work experience. For more information about qualifying work experience, see Frequently Asked Question #13.

If you cannot meet either of these requirements, you should NOT submit an entry to the DV program.

Procedures for Submitting an Entry to DV–2010

The Department of State will only accept completed Electronic Diversity Visa Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during the registration period between noon, Eastern Daylight Time (EDT) (GMT–4), Thursday, October 2, 2008 and noon, Eastern Standard Time (EST) (GMT–5) Monday, December 1, 2008.

All entries by an individual will be disqualified if more than ONE entry for that individual is received, regardless of who submitted the entry. You may prepare and submit your own entry, or have someone submit the entry for you.

A successfully registered entry will result in the display of a confirmation screen containing your name and a unique confirmation number. You may print this confirmation screen for your records using the print function of your web browser. Starting July 1, 2009, you will be able to check the status of your entry by returning to the Web site and entering your unique confirmation number and personal information.

Paper entries will not be accepted.

It is very important that all required photographs be submitted. Your entry will be disqualified if all required photographs are not submitted. Recent photographs of the following people must be submitted electronically with the Electronic Diversity Visa Entry Form: You; your spouse; each unmarried child under 21 years of age at the time of your electronic entry, including all natural children as well as all legally adopted children and stepchildren, even if a child no longer resides with you or you do not intend for a child to immigrate under the DV program. You do not need to submit a photo for a child who is already a U.S. citizen or a Legal Permanent Resident.

Group or family photographs will not be accepted; there must be a separate photograph for each family member. Failure to submit the required photographs for your spouse and each child listed will result in an incomplete entry to the E-DV system. The entry will not be accepted and must be resubmitted. Failure to enter the correct photograph of each individual in the case into the E-DV system will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

A digital photograph (image) of you, your spouse, and each child must be submitted on-line with the E-DV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Entries are subject to disqualification and visa refusal for cases in which the photographs are not recent or have been manipulated or fail to meet the specifications explained below.

Instructions for Submitting a Digital Photograph (Image)

The image file must adhere to the following compositional specifications and technical specifications and can be produced in one of the following ways: Taking a new digital image or using a digital scanner to scan a submitted photograph. Entrants may test their photos for suitability through the photo validator link on the e-DV Web site before submitting their entries. The photo validator provides additional technical advice on photo composition along with examples of acceptable and unacceptable photos.

Compositional Specifications

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified: The person being photographed must directly face the camera; the head of the person should not be tilted up, down, or to the side; the head of the person should cover about 50% of the area of the photo; the photograph should be taken with the person in front of a neutral, light-colored background; dark or patterned backgrounds are not acceptable; the photo must be in focus; photos in which the person being photographed is wearing sunglasses or other items that detract from the face will not be accepted; photos of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; photographs of applicants with tribal or other headgear not specifically religious in nature will not be accepted; photographs of military, airline, or other personnel wearing hats will not be accepted.

Color photographs in 24-bit color depth are required. Photographs may be downloaded from a camera into a file in the computer or they may be scanned into a file in the computer. If you are using a scanner, the settings must be for True Color or 24-bit color mode. Color photographs must be scanned at this setting for the requirements of the DV program. See the additional scanning requirements below.

Technical Specifications

The submitted digital photograph must conform to the following specifications or the system will automatically reject the E-DV Entry Form and notify the sender.

When taking a new digital image: the image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of two hundred forty kilobytes (240 KB); the image resolution must be 600 pixels high by 600 pixels wide; the image color depth must be 24-bit color [**Note:** Color photographs are required. Black and white, monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will not be accepted.]

Before a photographic print is scanned it must meet the following specifications: A color image is required. The photographic print must also meet the compositional specifications. If the photographic print meets the print color and compositional specifications, scan the print using the following scanner specifications: Scanner resolution must be at least 150 dots per inch (dpi); the image file format in Joint Photographic Experts Group (JPEG) format; the maximum image file size must be two hundred forty kilobytes (240 KB); the image resolution at 600 by 600 pixels; the image color depth 24-bit color. [Note that black and white or grayscale images with 24-bit color depth and monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will not be accepted.]

Information Required for the Electronic Entry

There is only one way to enter the DV–2010 lottery. You must submit the DS 5501, the Electronic Diversity Visa Entry Form (E–DV Entry Form), which is accessible only at *http://www.dvlottery.state.gov*. Failure to complete the form in its entirety will disqualify the entry. Those who submit the E–DV entry will be asked to include the following information on the E–DV Entry Form.

1. FULL NAME—Last/Family Name, First Name, Middle Name.

2. DATE OF BIRTH—Day, Month, Year.

3. GENDER—Male or Female.

4. CITY WHERE YOU WERE BORN.

5. COUNTRY WHERE YOU WERE BORN—The name of the country should be that which is currently in use for the place where you were born.

6. COUNTRY OF ELIGIBILITY OR CHARGEABILITY FOR THE DV PROGRAM—Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. If you were born in a country that is not eligible for the DV program, please review the instructions to see if there is another option for country of chargeability available for you. For additional information on chargeability, please review ''Frequently Asked Question #1'' of these instructions.

7. ENTRY PHOTOGRAPH(S)—See the technical information on photograph specifications. Make sure you include photographs of your spouse and all your children, if applicable. See: Frequently Asked Question #3.

8. MAILING ADDRESS—In Care of, Address Line 1, Address Line 2, City/Town, District/Country/Province/State, Postal Code/Zip Code, Country.

9. COUNTRY WHERE YOU LIVE TODAY.

10. PHONE NUMBER (optional).

11. E-MAIL ADDRESS (optional).

12. WHAT IS THE HIGHEST LEVEL OF EDUCATION YOU HAVE ACHIEVED, AS OF TODAY? You must indicate which one of the following represents your own highest level of educational achievement: (1) Primary school only, (2) High school, no degree, (3) High school degree, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate level courses, (8) Master degree, (9) Some doctorate level courses, and (10) Doctorate degree.

13. MARITAL STATUS—Unmarried, Married, Divorced, Widowed, Legally Separated.

14. NUMBER OF CHILDREN: Entries must include the name, date and place of birth of your spouse and all natural children, as well as all legally-adopted children and stepchildren, who are unmarried and under the age of 21 on the date of your entry (do not include children who are already U.S. citizens or Legal Permanent Residents), even if you are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older are not eligible for the diversity visa, however, U.S. law protects children from ''aging out'' in certain circumstances. If your electronic DV entry is made before your unmarried child turns 21, even if they turn 21 before visa issuance, they will be treated as though they are under 21 for visa processing purposes. Failure to list all children who are eligible will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview. See: Frequently Asked Question #11.

15. SPOUSE INFORMATION—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph. Failure to list your spouse will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

16. CHILDREN INFORMATION—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, and Photograph: Include all children declared in question #14 above.

Selection of Applicants

The computer will select at random individuals from among all qualified entries. They will be notified by mail between May and July 2009 and will be provided further instructions, including information on fees connected with immigration to the U.S. Those selected in the random drawing are not notified by e-mail. Those individuals not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of successful entrants. Spouses and unmarried children under age 21 of successful entrants may also apply for visas to accompany or follow to join the principal applicant. DV–2010 visas will be issued between October 1, 2009 and September 30, 2010.

Processing of entries and issuance of diversity visas to successful individuals and their eligible family members must occur by midnight on September 30, 2010. Under no circumstances can diversity visas be issued or adjustments approved after this date, nor can family members obtain diversity visas to follow to join the principal applicant in their case in the U.S. after this date.

In order to receive a Diversity Visa to immigrate to the United States, those chosen in the random drawing must meet all eligibility requirements under U.S. law. These requirements may significantly increase the level of scrutiny required and time necessary for processing of applicants for natives of some countries listed in this notice, including, but not limited to, countries identified as state sponsors of terrorism.

Important Notice

No fee is charged for the electronic lottery entry in the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV entries do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the entrant's discretion.

A qualified entry submitted electronically directly by an applicant has an equal chance of being selected by

the computer at the Kentucky Consular Center, as does an entry submitted electronically through a paid intermediary who completes the entry for the applicant. Every entry received during the lottery registration period will have an equal random chance of being selected within its region. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.

Frequently Asked Questions About E–DV Registration

1. What Do the Terms ''Eligibility'', ''Native'' and ''Chargeability'' Mean? Are There Any Situations in Which Persons Who Were Not Born in a Qualifying Country May Apply?

Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. ''Native'' ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. For immigration purposes ''native'' can also mean someone who is entitled to be ''charged'' to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act. For example, if you were born in a country that is not eligible for this year's DV program, you may claim chargeability to the country where your derivative spouse was born, but you will not be issued a DV–1 unless your spouse is also eligible for and issued a DV–2, and both of you must enter the United States together with the diversity visas. In a similar manner, a minor dependent child can be ''charged'' to a parent's country of birth.

Finally, if you were born in a country not eligible to participate in this year's DV program, you can be ''charged'' to the country of birth of either of your parents as long as neither parent was a resident of the ineligible country at the time of the your birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country, studying in the country temporarily, or stationed temporarily in the country for business or professional reasons on behalf of a company or government from a country other than the country in which the applicant was born. If you claim alternate chargeability, you must indicate such information on the E–DV electronic online entry form, question #6. Please be aware that listing an incorrect country of eligibility or chargeability (i.e. one to which you cannot establish a valid claim) may disqualify your entry.

2. Are There Any Changes in New Requirements in the Application Procedures for This Diversity Visa Registration?

No paper entries will be accepted. For DV–2010, you may check the status of your entry using your confirmation page information. Because this confirmation information will be provided only once, at the time of your entry, it is extremely important that you print or write down your confirmation information for later use. If you lose this information, you will still receive a letter from the Kentucky Consular Center by mail notifying you of your selection, if you are successful. You will receive no additional notification if your entry is unsuccessful, but may check this through the Internet using your confirmation information.

Photo size requirements have increased for DV–2010 to 600 by 600 pixels. Old photos used in previous years should not be reused for DV–2010. Only color photos may be submitted for DV–2010. Black and white photos are not acceptable.

3. Are Signatures and Photographs Required for Each Family Member, or Only for the Principal Entrant?

Signatures are not required on the Electronic Diversity Visa Entry Form. Recent and individual photographs of you, your spouse and all children under 21 years of age are required. Family or group photographs are not accepted. Refer to information on the photograph requirements located in this notice.

4. Why Do Natives of Certain Countries Not Qualify for the Diversity Program?

Diversity visas are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the U.S. The law states that no diversity visas shall be provided for natives of ''high admission'' countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the period of the previous five years. Each year, the USCIS adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives will be ineligible for the annual diversity lottery. Because there is a separate determination made before each annual E–DV entry period, the list of countries whose natives are not eligible may change from one year to the next.

5. What is the Numerical Limit for DV–2010?

By law, the U.S. diversity immigration program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–1999, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. The actual reduction of the limit by up to 5,000 diversity visas began with DV–2000 and is likely to remain in effect through the DV–2010 program.

6. What Are the Regional Diversity Visa (DV) Limits for DV–2010?

The U.S. Citizenship and Immigration Services (USCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the USCIS has completed the calculations, the regional visa limits will be announced.

7. When Will Entries for the DV–2010 Program Be Accepted?

The DV–2010 entry period will run through the registration period. Each year millions of people apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful individuals. Holding the entry period during October, November, and December will ensure that selectees are notified in a timely manner, and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance. You are strongly encouraged to enter early in the registration period. Excessive demand at end of the registration period may slow the system down. No entries whatsoever will be accepted after noon EST Monday, December 1, 2008.

8. May Persons Who Are in the U.S. Apply for the Program?

Yes, an applicant may be in the U.S. or in another country, and the entry may be submitted from the United States or from abroad.

9. Is Each Applicant Limited to Only One Entry During the Annual E–DV Registration Period?

Yes, the law allows only one entry by or for each person during each registration period. Individuals for whom more than one entry is submitted will be disqualified. The Department of State will employ sophisticated technology and other means to identify individuals who submit multiple entries during the registration period. People submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Individuals may apply for the program each year during the regular registration period.

10. May a Husband and a Wife Each Submit a Separate Entry?

Yes, a husband and a wife may each submit one entry if each meets the eligibility requirements. If either were selected, the other would be entitled to derivative status.

11. What Family Members Must I Include on My E–DV Entry?

On your entry you must list your spouse (husband or wife), and all unmarried children under 21 years of age, with the exception of children who are already U.S. citizens or Legal Permanent Residents. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (i.e., there is a written agreement recognized by a court or a court order). If you are legally separated or divorced, you do not need to list your former spouse. You must list all your children who are unmarried and under 21 years of age at the time of your initial electronic DV entry, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age at the time of your electronic entry even if they no longer reside with you or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. This only applies to those who were family members at the time the original application was submitted, not those acquired at a later date. Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. See question #10 above.

12. Must I Submit My Own Entry, or May Someone Act on My Behalf?

You may prepare and submit your own entry, or have someone submit the entry for you. Regardless of whether an entry is submitted by the individual directly, or assistance is provided by an attorney, friend, relative, etc., only one entry may be submitted in the name of each person and the entrant remains responsible for insuring that information in the entry is correct and complete. If the entry is selected, the notification letter will be sent only to the mailing address provided on the entry. All entrants, including those not selected, will be able to check the status of their entry through the official DV Web site. Entrants should keep their own confirmation page information so they may independently check the status of their entry.

13. What Are the Requirements for Education or Work Experience?

The law and regulations require that every entrant must have at least a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation requiring at least two years training or experience. A ''high school education or equivalent'' is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Only formal courses of study meet this requirement, correspondence programs or equivalency certificates (such as the G.E.D.) are not acceptable. Documentary proof of education or work experience must be presented to the consular officer at the time of the visa interview. To determine eligibility based on work experience, definitions from the Department of Labor's *O*Net OnLine* database will be used.

What Occupations Qualify for the Diversity Visa Program? The Department of Labor (DOL) *O*Net Online* Database groups job experience into five ''job zones.'' While many occupations are listed on the DOL Web site, only certain specified occupations qualify for the Diversity Visa Program. To qualify for a Diversity Visa on the basis of your work experience, you must, within the past five years, have two years of experience in an occupation that is designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.

How Do I Find the Qualifying Occupations on the Department of Labor Web Site? Qualifying DV Occupations are shown on the Department of Labor *O*Net Online* Database. Follow these steps to find out if your occupation qualifies: Select ''Find Occupations'' and then select a specific ''Job Family.'' For example, select Architecture and Engineering and click ''GO.'' Then click on the link for the specific Occupation. Following the same example, click Aerospace Engineers. After selecting a specific Occupation link, select the tab ''Job Zone'' to find out the designated Job Zone number and Specific Vocational Preparation (SVP) rating range.

14. How Will Successful Entrants Be Selected?

At the Kentucky Consular Center, all entries received from each region will be individually numbered. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered, the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the entrant will be sent a notification letter by the Kentucky Consular Center, which will provide visa application instructions. The Kentucky Consular Center will continue to process the case until those selected to be visa applicants are instructed to appear for visa interviews at a U.S. consular office or until those qualifying to change status in the United States apply at a domestic USCIS office.

Important Note: Notifications to those selected in the random lottery are not sent by e-mail. Should you receive an e-mail notification about your E–DV selection, be aware that the message is not legitimate.

15. May Selectees Adjust Their Status With USCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected individuals who are physically present in the United States may apply to the USCIS for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2010, since on that date

registrations for the DV–2010 program expire. No visa numbers for the DV–2010 program will be available after midnight on September 30, 2010 under any circumstances.

16. Will Entrants Who Are Not Selected Be Informed?

Starting with DV–2010, all entrants, including those not selected, will be able to check the status of their entry through the E–DV Web site and find out if their entry was or was not selected. Entrants should keep their own confirmation page information from the time of their entry (October 2, 2008 to December 1, 2008) until they may check the status of their entry online. Status information for DV–2010 will be available online from July 1, 2009 until June 30, 2010. All notification letters are sent within five to seven months from the end of the application period to the address indicated on the entry.

17. How Many Individuals Will Be Selected?

There are 50,000 DV visas available for DV–2010, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the Kentucky Consular Center to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews for the DV–2010 program will begin in October 2009. The Kentucky Consular Center will send appointment letters to selected applicants four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month visas will be issued, visa number availability permitting, to those applicants who are ready for issuance during that month. Once all of the 50,000 DV visas have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2010. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the Kentucky Consular Center computer as a selectee does not automatically guarantee that you will receive a visa. You must qualify for the visa as well.

18. Is There a Minimum Age for Applicants To Apply for the E–DV Program?

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are There Any Fees for the E–DV Program?

There is no fee for submitting an electronic lottery entry. DV applicants must pay all required visa fees at the time of visa application directly to the consular cashier at the embassy or consulate. Details of required diversity visa and immigration visa application fees will be included with the instructions sent by the Kentucky Consular Center to applicants who are selected.

Do DV Applicants Receive Waivers of Any Grounds of Visa Ineligibility or Receive Special Processing for a Waiver Application?

Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are no special provisions for the waiver of any ground of visa ineligibility aside from those ordinarily provided in the Act, nor is there special processing for waiver requests. Some general waiver provisions for people with close relatives who are American Citizens of Lawful Permanent Resident aliens may be available to DV applicants as well, but the time constraints in the DV program will make it difficult for applicants to benefit from such provisions.

21. May Persons Who Are Already Registered for an Immigrant Visa in Another Category Apply for the DV Program?

Yes, such persons may apply for the DV program.

22. How Long Do Applicants Who Are Selected Remain Entitled To Apply for Visas in the DV Category?

Persons selected in the DV–2010 lottery are entitled to apply for visa issuance only during fiscal year 2010, from October 1, 2009 through September 30, 2010. Applicants must obtain the DV visa or adjust status by the end of the fiscal year. There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas during FY–2010. Also, spouses and children who derive status from a DV–2010 registration can only obtain visas in the DV category between October 2009 and September 2010. Applicants who apply overseas will receive an appointment letter from the Kentucky Consular Center four to six weeks before the scheduled appointment.

23. If an E–DV Selectee Dies, What Happens to the DV Case?

The death of an individual selected in the lottery results in automatic revocation of the DV case. Any eligible spouse and/or children are no longer entitled to the DV visa, for that entry.

24. When Will E–DV Online Be Available?

Online entry will be available during the registration period beginning at noon EDT (GMT–4) on October 2, 2008 and ending at noon EST (GMT–5) on December 1, 2008.

25. Will I Be Able To Download and Save the E–DV Entry Form to a Microsoft Word Program (or Other Suitable Program) and Then Fill It Out?

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. This makes it more ''universal'' than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while on-line.

26. If I Don't Have Access to a Scanner, Can I Send Photographs to My Relative in the U.S. To Scan the Photographs, Save the Photographs to a Diskette, and Then Mail the Diskette Back to Me To Apply?

Yes, this can be done as long as the photograph meets the photograph requirements in the instructions, and the photograph is electronically submitted with, and at the same time the E–DV online entry is submitted. The applicants must already have the scanned photograph file when they submit the entry on-line. The photograph cannot be submitted separate from the online application. Only one on-line entry can be submitted for each person. Multiple submissions will disqualify the entry for that person for DV–2010. The entire entry (photograph and application together) can be submitted electronically from the United States or from overseas.

27. Can I Save the Form On-Line So That I Can Fill Out Part and Then Come Back Later and Complete the Remainder?

No, this cannot be done. The E–DV Entry Form is designed to be completed

and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the E–DV system is designed to permit up to sixty (60) minutes between the downloading of the form and when the entry is received at the E–DV Web site after being submitted online. If more than sixty minutes elapses and the entry has not been electronically received, the information already received is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry. For example, suppose an applicant with a wife and child sends a filled in E–DV Entry Form Part One and then receives Form Part Two, but there is a delay before sending Part Two because of trouble finding the file that holds the child's photograph. If the filled in Form Part Two is sent by the applicant and received by the E–DV Web site within sixty (60) minutes, there is no problem. However, if the Form Part Two is received after sixty (60) minutes have elapsed, then the applicant will be informed that he or she must start the entire entry over from the beginning. The DV–2010 instructions explain clearly and completely what information is required to fill in the form. This way you can be fully prepared, making sure you have all of the information needed, before you start to complete the form on-line.

28. If the Submitted Digital Images Do Not Conform to the Specifications, the Procedures State That the System Will Automatically Reject the E–DV Entry Form and Notify the Sender. Does This Mean I Will Be Able to Re-Submit My Entry?

Yes, the entry can be resubmitted. Since the entry was automatically rejected, it was not actually considered as submitted to the E–DV Web site. It does not count as a submitted E–DV entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent, because it does not conform to the requirements, it is automatically rejected by the E–DV Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable due to the nature of the Internet. If the problem can be fixed by the applicant, and the Form Part One or Two is re-sent within sixty (60) minutes, there is no problem. Otherwise the submission process will have to be started over. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

29. Will the Electronic Confirmation Notice That the Completed E–DV Entry Form Has Been Received Through the Online System Be Sent Immediately After Submission?

The response from the E–DV Web site which contains confirmation of the receipt of an acceptable E–DV Entry Form is sent by the E–DV Web site immediately. However, how long it takes the response to reach the sender is unpredictable due to the nature of the Internet. If many minutes have elapsed since pressing the 'Submit' button, there is no harm in pressing the 'Submit' button a second time. The E–DV system will not be confused by a situation where the 'Submit' button is hit a second time, because no confirmation response has been received. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent. However, once you receive a confirmation notice, do not resubmit your information.

30. How Will I Know if the Notification of Selection That I Have Received Is Authentic? How Can I Confirm That I Have in Fact Been Chosen in the Random DV Lottery?

Keep your confirmation page. You will need it to check the status of your entry yourself at the official DV Web site after the electronic lottery is conducted (usually March). If you lose your confirmation information you will not be able to check your DV entry status yourself and we will not resend the confirmation page to you. If selected, you will also receive a letter from the Kentucky Consular Center by mail sometime between May and July 2009 at the addresses listed on the E–DV entry. Only the randomly selected individuals will be notified by mail. Persons not selected may check their entry using their confirmation information through the official DV Web site, but will not receive additional official notification by e-mail or by mail. We will not resend confirmation page information to you. If you lose your confirmation page information you will only find out if you were selected if you receive an official letter by mail. U.S. embassies and consulates will not be able to provide a list of those selected to continue the visa process.

The Kentucky Consular Center (KCC) will send the letters notifying those selected. These letters will contain instructions for the visa application process. The instructions say the selected applicants will pay all diversity and immigrant visa fees in person only at the U.S. Embassy or Consulate at the time of the visa application. The Consular Cashier or Consular Officer immediately gives the visa applicant a U.S. Government receipt for payment. You should never send money for DV fees through the mail, through Western Union, or any other delivery service.

The E–DV lottery entries are made on the Internet, on the official U.S. Government E–DV Web site at *http://www.dvlottery.state.gov.* KCC sends only letters to the selected applicants. KCC, consular offices, or the U.S. Government has never sent e-mails to notify selected individuals, and there are no plans to use e-mail for this purpose for the DV–2010 program.

The Department of State, Visa Services advises the public that only Internet sites including the ''.gov'' indicator are official government Web sites. Many other non-governmental Web sites (e.g., using the suffixes ''.com'' or ''.org'' or ''.net'') provide legitimate and useful immigration and visa related information and services. Regardless of the content of non-governmental Web sites, the Department of State does not endorse, recommend or sponsor any information or material shown at these other Web sites.

Some Web sites may try to mislead customers and members of the public into thinking they are official Web sites and may contact you by e-mail to lure you to their offers. These Web sites may attempt to require you to pay for services such as forms and information about immigration procedures, which are otherwise free on the Department of State Visa Services Web site, or overseas through the Embassy Consular Section Web sites. Additionally, these other Web sites may require you to pay for services you will not receive, often including diversity immigration application and visa fees in an effort to outright steal your money. Once you send money in one of these scams, you will never see it again. Also, you should be wary of sending any personal information that might be used for identity fraud/theft to these Web sites.

31. How Do I Report Internet Fraud or Unsolicited E-Mail?

If you wish to file a complaint about Internet fraud, please see the econsumer.gov Web site, hosted by the Federal Trade Commission, which is a joint effort of consumer protection agencies from 17 nations at *http://www.econsumer.gov/english/* or go to the Federal Bureau of Investigation (FBI) *Internet Crime Complaint Center or IC3.* To file a complaint about unsolicited e-

mail, contact the *Department of Justice Contact Us page.*

32. If I Am Successful in Obtaining a Visa Through the Dv Program

Will the U.S. Government Assist With My Airfare to the U.S., Provide Assistance to Locate Housing and Employment, Provide Healthcare or Provide Any Subsidies Until I Am Fully Settled?

No, applicants who obtain a DV visa are not provided any type of assistance such as airfare, housing assistance, or subsidies. If you are selected to apply for a DV visa, before you can be issued a visa, you will be required to provide evidence that you will not become a public charge in the U.S. This evidence may be in the form of a combination of your personal assets, an Affidavit of Support, Form I–134 from a relative or friend residing in the U.S. and/or an offer of employment from an employer in the U.S.

List of Countries by Region Whose Natives Are Eligible for DV–2010

The lists below show the countries whose natives are eligible for DV–2010 within each geographic region for this diversity program. The countries whose natives are not eligible for the DV–2010 program were identified by the U.S. Citizenship and Immigration Services (USCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. Dependent areas overseas are included within the region of the governing country. The countries whose natives are not eligible for this diversity program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration, or ''high admission'' countries) are noted after the respective regional lists.

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the
Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Persons born in the Gaza Strip are chargeable to Egypt.

List of Countries by Region Whose Natives Are Eligible for DV–2010

Asia

Afghanistan
Bahrain
Bangladesh
Bhutan
Brunei
Burma
Cambodia
East Timor
Hong Kong Special Administrative Region
Indonesia
Iran
Iraq
Israel
Japan
Jordan
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Taiwan
Thailand
United Arab Emirates
Yemen

Natives of the following Asian countries are not eligible for this year's diversity program:

China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. Hong Kong S.A.R. and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below. Persons born in the areas administered prior to June 1967 by Israel, Jordan and Syria are chargeable, respectively, to Israel, Jordan and Syria.

List of Countries by Region Whose Natives Are Eligible for DV–2010

Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and dependent areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kosovo
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia, the Former Yugoslav Republic
Macau Special Administrative Region
Malta
Moldova
Monaco
Montenegro
Netherlands (including components and dependent areas overseas)
Northern Ireland
Norway
Portugal (including components and dependent areas overseas)
Romania
Russia

San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City

Natives of the following European countries are not eligible for this year's diversity program: Great Britain and Poland. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands. Note that for purposes of the diversity program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

List of Countries by Region Whose Natives Are Eligible for DV–2010

North America

The Bahamas

In North America, natives of Canada and Mexico are not eligible for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of
Nauru
New Zealand (including components and dependent areas overseas)
Palau
Papua New Guinea
Somoa
Solomon Islands
Tonga
Tuvalu
Vanuatu

South America, Central America, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Belize
Bolivia
Chile
Costa Rica
Cuba
Dominica
Grenada
Guyana
Honduras
Nicaragua
Panama
Paraguay
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

Countries in this region whose natives are not eligible for this year's diversity program: Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, and Peru.

Dated: September 22, 2008.

Janice Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E8–22994 Filed 9–29–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting, Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a second meeting of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

DATES: The meeting will be held October 23, 2008 9 a.m. to 12 noon.

ADDRESSES: Trump International Beach Resort, 18001 Collins Ave., Sunny Isles Beach, FL 33160, Tel: 305.692.5600, Fax: 305.692.5601, *http://www.trumpmiami.com.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* for directions. For additional details contact: Kelly O'Keefe, Tel: + 1 202 772–1873, e-mail: *Kelly@accesspartnership.com.*

Note: Dress is Business Casual.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 215 meeting. The agenda will include:

October 23

Opening Plenary Session

- Greetings, Introductions, Administrative Remarks
- Review and Approval of Agenda for Tenth Plenary
- Review of October 2008 PMC Meeting
- Review of Revised Terms of Reference
- Review and Approval of Ninth Meeting Summary (RTCA Paper No. 211–08/SC215–031)

DO–262 Normative Appendix

- Status Update of Final Draft Approval
- Revision of TSO C–159 (FAA)

DO–270 Normative Appendix

- Report from Drafting Group
- Subnetwork Operational Approval Process

Closing Plenary

- Any Other Business
- Review of Next Plenary Meeting Dates
- Adjourn—October 23, 2008—12 noon

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–22983 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

Time and Date: November 6, 2008, 12 noon to 3 p.m., Eastern Time.

Place: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505)

827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

Status: Open to the public.

Matters To Be Considered: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: September 24, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–23053 Filed 9–29–08; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Great Smoky Mountain Railroad

[Waiver Petition Docket Number FRA–2008–0096]

The Great Smoky Mountain Railroad (GSM) has petitioned FRA to grant a waiver of compliance of the Safety Glazing Standards, 49 CFR 223.13, *Requirements for Existing Cabooses.* Specifically, this waiver request is for three (3) cabooses, GSM 01490, GSM 637 and X782. The noted cabooses are normally used for captive tourist service. On occasion, they are used for freight service to interchange with the Norfolk Southern Railroad within yard limits over 10 miles of the 53 miles of total track to comply with 49 CFR 232.407, *Operations Requiring Use of a Two Way End of Train Device.*

The 3 cabooses operate over a combination of class 1 and class 2 track at a speed not exceeding 20 miles per hour. The total trackage is 53 miles. The 3 noted cabooses are presently equipped with a mixture of safety glass and Lexan (polycarbonate thermoplastic). GSM has been in business for over 20 years, and to this date, there has been no record of any accident/incident and/or injury to any railroad employee that involved glazing. The cost to replace the present glazing would be cost prohibitive, and the estimated cost would be approximately $3,270 plus labor.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0096) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on September 24, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–22904 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29123]

Capital Investment Program: Availability of Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Circular.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance in the form of a circular to assist grantees in implementing the Capital Investment Program. Principally, the Capital Investment Program provides Federal funding for buses and bus facilities, new fixed guideway systems, and fixed guideway modernization, as authorized by statute.

DATES: The effective date of the circular is November 1, 2008.

FOR FURTHER INFORMATION CONTACT: Kimberly Sledge, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Washington, DC 20590, phone: (202) 366–2053, fax: (202) 366–7951, or e-mail, *Kimberly.Sledge@dot.gov;* or Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366–0944, fax: (202) 366–3809, or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Circular

The final circular is not included with this document. You may download an electronic copy of the circular from FTA's Web site, at *http://www.fta.dot.gov.* From the home page, click on ''Legislation, Regulations and Guidance'' and on that page click on ''Circulars.'' Circulars are listed in numerical order; the Capital Investment Circular is number 9300.1. Paper copies of the circular may be obtained by calling FTA's Administrative Services Help Desk, at 202–366–4865.

You may retrieve the circular and comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.* Enter docket number FTA–2007–29123 in the

search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

Table of Contents

II. Chapter-by-Chapter Analysis
A. Chapter I—Introduction and Background
B. Chapter II—Program Overview
C. Chapter III—Buses and Bus Facilities
D. Chapter IV—Fixed Guideway Modernization
E. Chapter V—New Starts/Small Starts Program
F. Chapter VI—Other Provisions
G. Appendices

I. Overview

This notice provides a summary of changes to FTA Circular 9300.1A, Capital Program: Grant Application Instructions, and addresses comments received in response to the September 28, 2007, **Federal Register** notice (72 FR 55624). Originally, the comment period was scheduled to close on November 27, 2007; however, in response to comments to the docket, the comment period was subsequently extended until January 25, 2008. FTA received comments from twelve parties, including industry associations, transit agencies, metropolitan planning organizations, and one private transportation provider.

This final Circular 9300.1B supersedes the Circular 9300.1A, issued in 1998.

FTA has adopted all of the proposed formatting changes published in the proposed circular. For example, we have changed the name of the circular to ''Capital Investment Program'' to reflect a focus on the capital investment nature of eligible activities in 49 U.S.C. 5309 (''Section 5309''), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In addition, we changed the format to make this circular consistent with the style of other circulars FTA is updating. At the same time, we have tried to maintain some consistency with the previous document; for example, information about the Bus program is still in Chapter III, Fixed Guideway Modernization continues to be in Chapter IV, with New Starts/Small Starts information in Chapter V. Substantive changes in content, as well as comments to the proposed circular, are discussed in the chapter-by-chapter analysis.

II. Chapter-by-Chapter Analysis

As a preliminary matter, some commenters had non-substantive comments, such as formatting suggestions, a suggestion to remove references to old **Federal Register** notices, to include specific terms in the index, and to do a thorough review of the draft for typos, cross-referencing errors, and the like. We have removed the old **Federal Register** references, made some, but not all, of the suggested formatting changes, added terms to the index, and we have thoroughly reviewed the document in an effort to remove the errors noted by commenters. Further, we have re-ordered the sections of some of the chapters to present the material in a more organized fashion. Some comments were outside the scope of the proposed circular, and we have not addressed those comments in either the circular or this **Federal Register** notice.

One commenter thought the title ''Capital Investment Program'' was misleading since we have included a brief description of the Clean Fuels program (49 U.S.C. 5308) in the Bus chapter. We included information about the Clean Fuels program because buses purchased under Section 5309 may be Clean Fuels buses, and some recipients under Section 5309 may also seek funding under the Clean Fuels program for additional buses. It is therefore appropriate to include information about this related program in the Bus chapter. One commenter suggested that if FTA amends or updates the circular due to changes in other circulars or regulations that undergo notice and comment, that there be further public notice and comment. FTA disagrees. When the revision of a circular or regulation requires an opportunity for notice and comment, there is no need to satisfy that requirement again just to update a reference to that revised document in this circular. We have clarified this language in the circular.

A. Chapter I—Introduction and Background

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for the Capital Investment program (''Section 5309 program''), provides information about Grants.gov, includes definitions applicable to the program, and provides a brief program history. The definitions section is new to this circular and includes definitions related to the Section 5309 program, as well as the Section 5308, Clean Fuels grant program. Where applicable, we have used the same definitions found in statutes, rulemakings or other circulars and guidance documents to ensure consistency.

One commenter suggested that the definition of ''Alternatives Analysis'' should not require alternatives analysis studies to include sufficient information to provide a rating for project justification and local financial commitment. FTA refers the commenter and others to 49 U.S.C. 5309(a)(1)(B), which requires that alternatives analysis studies include this information. Since this information is in the statute, we did not change the definition in the circular.

Two commenters had questions about the definitions of ''Eligible Applicant'' and ''Designated Recipient'' as used in this circular. The term ''Eligible Applicant,'' as used in this circular, applies only to the Capital Investment program, and not to the Clean Fuels bus program; similarly, the definition of ''Designated Recipient,'' as used in this circular, applies only to the Clean Fuels program, as it specifically addresses the nonattainment and maintenance area requirements of the Clean Air Act. We have used the term ''Recipient'' when referring to a designated recipient or an eligible applicant, but when those specific terms are used in this circular, they apply to either the Clean Fuels or the Capital Investment program, as defined. One commenter suggested that FTA change the Clean Fuels definition to state, ''* * * the Administrator of EPA has certified sufficiently or significantly reduces harmful emissions.'' Since the statute at 49 U.S.C. 5308(a)(1)(B) uses the term ''sufficiently,'' FTA will use the same terminology.

One commenter suggested we add the word ''streetcar'' to the definition of fixed guideway and we made that change. One commenter suggested we add a definition of ''Urbanized Area,'' and we have done so. One commenter suggested that we change the acronym for urbanized area from ''UZA'' to ''UA,'' which is the Census Bureau's acronym. We decline to make that change. The acronym UZA is familiar to the transit industry, is used in virtually every FTA document, and has become a term of art. At the request of a commenter, we have added a definition of ''Intelligent Transportation Systems,'' but decline to add a definition of ''Eligible Projects,'' as eligible projects are included in Chapters II through V. One commenter objected to the inclusion of a definition of ''Very Small Starts;'' we will address that objection and other comments received regarding Very Small Starts in the analysis of Chapter V.

In addition to the changes described above, FTA has added several

definitions to this chapter, including ''Capital Asset,'' ''Capital Lease,'' ''Discretionary Funding,'' ''Facilities,'' ''Grant,'' ''Intelligent Transportation Systems,'' ''Preventive Maintenance,'' ''Public Transportation,'' and ''Useful Life.''

B. Chapter II—Program Overview

Chapter II provides more detail about the Capital Investment program. The first few sections of the chapter were re-ordered for readability and consistency. This chapter starts with the statutory authority for the Capital Investment program, followed by apportionments, funds availability, the goals of the program and a list of eligible projects. Also included in Chapter II is information on Federal/local matching requirements, relationship to other FTA programs, and the requirements to ensure a recipient has the legal, financial and technical capacity to carry out a Capital Investment project.

There were some changes to eligible projects under 49 U.S.C. 5309 with the enactment of SAFETEA–LU. Under the previous authorization statute (The Transportation Equity Act for the 21st Century (TEA–21)), there were eight categories of eligible projects in 49 U.S.C. 5309. These included bus and bus facilities, new fixed guideways, fixed guideway modernization, development of corridors to support fixed guideway systems, projects designed to meet the needs of elderly and disabled passengers, projects to introduce new technology, the capital costs of coordinating public transportation with other transportation, and capital projects needed for an efficient and coordinated public transportation system. Under SAFETEA–LU, there are only four categories of eligible projects in 49 U.S.C. 5309: bus and bus facilities, new fixed guideways, fixed guideway modernization, and corridor improvements. Therefore, the list of eligible projects in the circular changed, as well. We defined the four categories of eligible projects as ''capital investment projects'' and listed them in this chapter as ''assets for which FTA provides assistance.'' In addition to these ''capital investment projects,'' however, we have included a list of projects that, ''when integral to a capital investment project,'' are eligible for Section 5309 funding. One commenter asked us to clarify whether Intelligent Transportation Systems (ITS) is eligible as a stand-alone project. Since the statute permits the purchase of ''buses and related equipment'' and ITS projects are directly related to buses and bus facilities, ITS is eligible as a stand-alone project. In addition, bus purchases to meet the needs of elderly persons and persons with disabilities continue to be eligible, since bus purchases generally are eligible. We note that the purchase of buses to meet the special transportation needs of these populations is the purpose of the Section 5310 program, and funding is available from that program to private non-profit organizations where public transportation is unavailable, insufficient or inappropriate.

We proposed removing two previously eligible projects from the circular: the capital cost of contracting and preventive maintenance for the bus program. We noted that both of these capital expenditures are eligible for funding under other FTA programs, including the Urbanized Area Formula program (49 U.S.C. 5307) and the Nonurbanized Area Formula program (49 U.S.C. 5311). Three commenters expressed concern about removing the capital cost of contracting from the list of eligible expenses, and three commenters expressed concern about removing preventive maintenance as an eligible expense. After careful consideration of the comments, we have returned both the capital cost of contracting and preventive maintenance to the list of eligible activities.

Two commenters suggested that FTA include ''intercity bus and intercity rail stations and terminals'' as eligible projects. We have added this language where appropriate. One commenter requested that we add a paragraph on Joint Development under the ''Relationship to Other Programs'' section of this chapter. We decline to add an additional paragraph, as there is an extensive discussion in Chapter III, at section 8, ''Requirements Related to Facilities,'' including a reference to FTA's policy on joint development, published in the **Federal Register** on February 7, 2007 (72 FR 5788).

C. Chapter III—Buses and Bus Facilities

Chapter III addresses buses and related equipment, commonly known as ''the bus program.'' This chapter contains information on how funds are allocated, a new section describing eligible recipients, examples of eligible bus projects, environmental considerations, requirements related to vehicles, equipment, and facilities, and information about a complementary program, the Clean Fuels grant program.

Two commenters suggested including intercity bus and rail terminals and stations as eligible projects. We have added this language where appropriate, and specified that funding of intercity bus stations and terminals are eligible when part of a joint development project, in accordance with FTA's guidance on joint development (72 FR 5788, Feb. 7, 2007).

One commenter recommended that FTA include a reference to the Federal Highway Administration's (FHWA) guidance on the Congestion Mitigation and Air Quality (CMAQ) Improvement program in the paragraph, ''Clean Air Act.'' We have added the hyperlink to FHWA's guidance on this program. One commenter suggested that FTA require recipients to include the planning justification in FTA's Transportation Electronic Award and Management (TEAM) system grant application. We have modified the circular to reflect this suggestion. We have also updated the Charter Bus information, since the final rule became effective on April 30, 2008.

Four commenters raised concerns about the paragraph describing ''Mixed-Use Projects'' in the section, ''Requirements Related to Facilities.'' Commenters were concerned about FTA's characterization of when a project would qualify as a joint development project, and were concerned that FTA had an overbroad interpretation of ''program income.'' In addition, one commenter requested that FTA include language on intercity bus terminals in this section. We have revised this section to address the commenter's concerns by more clearly describing joint development projects and clarifying when revenue is ''program income.'' Further, we added language about intercity bus terminals.

Two commenters suggested that FTA edit the section, ''Environmental Considerations,'' which describes the requirements under the National Environmental Policy Act (NEPA). In the proposed circular, we included examples of projects that are considered ''categorical exclusions''; however, FHWA and FTA jointly published a notice of proposed rulemaking in the **Federal Register** (72 FR 44038, Aug. 7, 2007), and therefore, that list may change. In order to keep the circular current even after the rule has been finalized, we have removed the list of items that are considered categorical exclusions and addressed NEPA requirements in general terms.

Two commenters suggested that FTA revise its like-kind exchange policy. One commenter suggested that proceeds from vehicles disposed of prior to the end of their useful lives should be able to be used for any federally funded activity. FTA's long-standing like-kind exchange policy requires assets disposed of prior to their useful lives to be replaced in kind, or the proceeds of such disposition returned to FTA. We

believe this policy protects the Federal interest and should not be changed. Another commenter suggested that FTA's ability to direct the proceeds of any sale should be limited to its remaining interest, and the use of proceeds in excess of the Federal interest should be up to the recipient. FTA declines to make this change because 49 U.S.C. 5334(h)(4)(B) requires that ''the net income from asset sales, uses, or leases (including lease renewals) * * * shall be used by the recipient to reduce the gross project cost of other capital projects carried out under this chapter.'' One commenter suggested that FTA develop useful life standards for sedans and pick-up trucks which are commonly purchased by transit agencies. FTA has added sedans used in revenue service to the list that includes small buses and vans, and we have added useful life standards for trolleys and ferryboats. Vehicles used in non-revenue service are considered ''equipment'' and the reader is directed to FTA circular 5010, Grants Management Requirements, for useful life requirements for equipment.

Two commenters made suggestions about the language in the section on Buy America; we have streamlined this paragraph in Chapter III as well as in other chapters that contain information on Buy America. One commenter requested that FTA permit a ''phase-in'' period for the requirements of the Presidential Coin Act. FTA does not have a role in the implementation of this statute. We provide the information in the circular simply to make recipients aware of their responsibilities. FTA has moved the section discussing the Presidential Coin Act to Chapter VI, Other Provisions, since it applies to all Section 5309 projects.

D. Chapter IV—Fixed Guideway Modernization

Chapter IV addresses fixed guideway modernization, and the chapter has been re-ordered for readability and consistency. One commenter disagreed with the statement in the section, ''Relationship to Urbanized Area Formula Funding,'' that for projects using both Section 5307 and Section 5309 funding, ''it may be efficient to submit the grant applications at the same time.'' We decline to remove this sentence. It is not a requirement that these applications be submitted at the same time, but in many cases, it may in fact be more efficient to do so. As we state in the circular, the grant applicant should discuss the best approach with the appropriate FTA regional office.

Similar to Chapter III's section on ''Environmental Considerations,'' we have edited the section, ''Requirements of Fixed Guideway Modernization Projects'' to remove the list of categorically excluded projects. This section now includes general information about NEPA requirements as they relate to fixed guideway modernization.

One commenter noted that FTA has adopted a general policy that rail vehicles have a minimum useful life of 25 years, but a recipient may measure lifespan by hours of operation or another measure, and requested that these alternative methodologies be referenced in subsequent paragraphs. We decline to make that change primarily because we note in the circular that ''A recipient * * * may develop an appropriate methodology for converting its system to years of service.'' Once converted, it is appropriate to discuss useful life in terms of years rather than in hours of service or other measure of useful life.

One commenter suggested that FTA clarify, in the subsection, ''Major Capital Projects,'' whether a project management plan must be approved by FTA as a prerequisite to having the grant approved, and set a time period for FTA review of any submissions. We have made this change.

E. Chapter V—New Starts/Small Starts Program

Chapter V addresses the New Starts/Small Starts program, and we have added a section, ''Allocation of Funds and Period of Availability.'' In addition to the information found in Chapter V of the circular, FTA maintains a New Starts Web page, at *http://www.fta.dot.gov/planning/planning_environment_5221.html*, which contains the most up-to-date guidance for this program.

In this circular, FTA draws a distinction between a ''New Start''—a project that has a total cost of $250 million or more, or for which the project sponsor is requesting more than $75 million in Federal funds; and a ''Small Start''—a project that has a total cost of less than $250 million that requests less than $75 million in Federal funds. The various requirements for these two different types of projects are described throughout the chapter.

Two commenters requested that FTA include the statutory list of characteristics that make a corridor-based bus capital project a ''fixed guideway capital project.'' The list of characteristics found in 49 U.S.C. 5309(e)(10)(B) is neither prescriptive nor exhaustive. The statute uses the words ''such as'' when listing those features that represent a ''substantial investment in a defined corridor.'' The discussion of Small Starts set forth in the circular reflects the proposed and final policy guidance on New Starts and Small Starts developed through public notice and comment. See, 73 FR 21170, Apr. 18, 2008 and 73 FR 46352, Aug. 8, 2008.

Two commenters questioned FTA's authority to establish requirements for ''Very Small Starts'' that differ from those for Small Starts since ''Very Small Starts'' are not defined or established by statute or regulation. FTA interprets 49 U.S.C. 5309(c)(3) to provide the Federal Transit Administrator with broad discretion to award grants for disparate types of New Start and Small Start projects on such ''terms, conditions, requirements, and provisions'' as the Administrator determines ''necessary or appropriate'' to carry out the New Starts and Small Starts programs authorized by 49 U.S.C. 5309(d) and (e). The discussion of Very Small Starts set forth in the circular reflects the proposed and final policy guidance on New Starts and Small Starts developed through public notice and comment. *See, e.g.*, 71 FR 45100, Aug. 8, 2006; 72 FR 6663, Feb. 12, 2007; 72 FR 30912, June 4, 2007; and the Updated Interim Guidance on Small Starts issued in July 2007. Although FTA has not yet promulgated a final regulation for New Starts and Small Starts, the Administrator continues, in his discretion, to award discretionary grants under both programs, and this circular reflects the basis on which the Administrator will award grants for Very Small Starts.

Two commenters indicated that FTA should revise its definition of ''financially constrained,'' found in the section, ''Planning and Project Development Process.'' We have revised this definition so that it is identical to the definition found in the FHWA/FTA planning regulation at 23 CFR 450.104. Two commenters suggested that in the section, ''Environmental Protection,'' the circular should not state that environmental regulations ''prohibit FTA from taking a final action * * *.'' We have revised the section to include language from the joint FHWA/FTA environmental regulations. One commenter indicated that we only addressed New Starts in this section; we have added the terms Small Starts and Very Small Starts, as the environmental protection requirements are likely to apply to those projects, as well.

F. Chapter VI—Other Provisions

This chapter is similar to the ''Other Provisions'' chapters in other FTA circulars, and summarizes a number of FTA-specific and other Federal

requirements that FTA grantees are held to in addition to the program-specific requirements and guidance provided in the circular. We revised this chapter to alphabetize the provisions, and we moved the Presidential Coin Act to this chapter.

Two commenters asked FTA to clarify whether the public hearing requirements described in the section, ''Public Hearing Requirements'' apply to projects that are categorical exclusions under NEPA. The circular states that NEPA public hearing requirements are sufficient to meet the requirements of 49 U.S.C. 5323(b), which requires public involvement for any capital project that will ''substantially affect a community or the public transportation services of a community.'' Therefore, whether or not NEPA public hearing requirements apply, the provisions of 49 U.S.C. 5323(b) require public involvement for most capital projects. In response to comments, we have edited this section to clarify the requirements.

We have revised the section, ''Environmental Reviews,'' since each chapter contains specific information about environmental requirements that apply to specific types of projects, and an extensive discussion in this chapter is repetitive and unnecessary. One commenter suggested that in the section, ''Clean Air Act,'' we include as an appendix the list of exempt transit projects in the EPA regulation that do not require any analysis. We decline to include this list, but we have included the direct regulatory citation for this information.

We have updated the section, ''Charter Bus Services'' to reflect the new regulation on charter service. (73 FR 2326, Jan. 14, 2008).

G. Appendices

The appendices are intended as tools for developing a grant application. Appendix A specifically addresses steps and instructions for preparing a grant application, including pre-application and application stages. Appendix A also includes an application checklist and information for registering with the Electronic Clearing House Operation's (ECHO's) electronic payment system. One commenter suggested we include information as to where one can find the TEAM User Guide; we have included the hyperlink to the Web site for this information. One commenter suggested that FTA request planning justification information in the ''project description'' section of TEAM. While this information is not required in the project description, we note that recipients must include the date and page number of the most recently approved Statewide Transportation Improvement Plan (STIP) for the projects listed in the application.

Appendix B provides budget information, including several sample budgets. Appendix C contains samples of an Authorizing Resolution, a Fleet Status Report, Like-Kind Transaction for Mid-life Sale of a Transit Bus, an Opinion of Counsel, a Project Milestone Schedule, and Proceeds from the Sale of Assets. Appendix D contains contact information for all of FTA's regional and metropolitan offices, and a new Appendix E contains a listing of all legal citations found in the circular.

With the substantive exceptions noted in the chapter-by-chapter analysis above, as well as non-substantive and clarifying edits, FTA adopts the final circular as proposed.

Issued in Washington, DC, this 22nd day of September, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–22840 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29122]

Grant Management Guidance

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Circular.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site (*http://www.fta.dot.gov*) guidance in the form of Circular 5010.1D, Grant Management Requirements, which circular replaces FTA's prior Grant Management Circular 5010.1C. Circular 5010.1D includes information pertaining to new and existing FTA programs; incorporates provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); discusses the circumstances under which a grantee may request budget revisions and grant amendments; identifies useful life standards for trolleys, ferry boats, and facilities; and increases the threshold that determines whether FTA must approve a real estate appraisal.

DATES: The effective date of the circular is November 1, 2008.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact MaryAnne Polkiewicz at 202–366–0203 or *maryanne.polkiewicz@dot.gov.* For legal questions, please contact Jayme L. Blakesley at 202–366–0304 or *jayme.blakesley@dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Circular

The final circular is not included with this document. You may download an electronic copy of the circular from FTA's Web site at *http://www.fta.dot.gov.* From the home page, click on ''Legislation, Regulations and Guidance'' and on that page click on ''Circulars.'' Circulars are listed in numerical order; the Grant Management Circular is number 5010.1D. Paper copies of the circular may be obtained by calling FTA's Administrative Services Help Desk at 202–366–4865.

You may retrieve the circular and comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.* Enter docket number 29122 in the search field. Instructions on using FDMS can be found under the help section of the Web site.

Table of Contents

I. Overview
II. Chapter-by-Chapter Analysis
A. Chapter I—Introduction and Background
B. Chapter II—Circular Overview
C. Chapter III—Grant Administration
D. Chapter IV—Project Management
E. Chapter V—Oversight
F. Chapter VI—Financial Management
G. Appendices

I. Overview

This notice provides a summary of changes to FTA's Grant Management Circular. The prior Grant Management Circular was numbered C 5010.1C. This new Grant Management Circular is numbered C 5010.1D. This final Circular 5010.1D supersedes Circular 5010.1C.

This notice addresses comments received in response to the September 28, 2007, **Federal Register** notice (72 FR 55629, Notice of Proposed Guidance and Request for Comment on the Federal Transit Administration's Grant Management Requirements FTA Circular 5010.1D). FTA received comments from nine parties, including an industry association, transit agencies, and State departments of transportation (State DOTs).

FTA has adopted most of the proposed formatting changes published in the proposed circular. For example, we changed the format to make this circular consistent with the style of other circulars FTA is updating while maintaining some consistency with the previous document. Substantive changes in content and comments to the

proposed circular are discussed in the Chapter-by-Chapter Analysis heading.

One commenter noted that in the September 28, 2007, **Federal Register** notice FTA titled proposed Circular 5010.1D ''Grant Management Requirements.'' This commenter asked FTA to change the title to ''Grant Management Guidelines.'' FTA disagrees with this change. The requirements in the circular are based on existing regulation.

The cover page to Circular 5010.1D includes a statement at Section (6) that ''FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment without further notice and comment on this circular.'' One commenter objected to this statement, arguing that all changes should be subject to notice and comment. FTA disagrees. When the revision of a circular or regulation includes an opportunity for notice and comment, there is no need to duplicate that effort for each circular affected by such revision.

One commenter lauded FTA, noting that the expanded narrative and examples are positive improvements. This commenter and one other stated that FTA could improve Circular 5010.1D by adding more references or Web addresses. FTA agrees with this commenter and will include Web addresses in the electronic version of Circular 5010.1D.

Three commenters asked FTA to clarify the difference between the terms grantee, recipient, and subrecipient. FTA has added language to Circular 5010.1D stating that it uses the terms grantee and recipient interchangeably, and clarifying its pass-thru policies.

II. Chapter-by-Chapter Analysis

As a preliminary matter, some commenters had non-substantive comments, such as formatting suggestions, a suggestion to remove references to old **Federal Register** notices, to include specific terms in the index, and to do a thorough review of the draft for typos, cross-referencing errors, and the like. We have removed the old **Federal Register** references, made some, but not all, of the suggested formatting changes, added terms to the index, and we have thoroughly reviewed the document in an effort to remove the errors noted by commenters. Furthermore, we have reordered the sections of some of the chapters to provide the material in a more organized fashion. Some comments were outside the scope of the proposed circular, and we have not addressed those comments in either the circular or this **Federal Register** notice.

A. Chapter I—Introduction and Background

Chapter I introduces the Federal Transit Administration (FTA) and its authorizing legislation (49 U.S.C. Chapter 53). It also instructs readers on how to contact FTA and how to find out about competitive grant opportunities using Grants.gov. Finally, Chapter I defines all terms-of-art used in Circular 5010.1D.

One commenter asked FTA to change its definition of ''real property'' to conform to certain State provisions that define real property to include machinery and equipment that are fixtures. After careful consideration, FTA has decided against changing its definition of real property.

The same commenter asked FTA to revise its definitions of ''equipment'' and ''supplies'' so that the dollar value thresholds are comparable. This commenter asked FTA to raise the ceiling for supplies to $25,000. FTA declines to revise its definitions of ''equipment'' and ''supplies.'' These definitions are based on the definitions and requirements at 49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the Common Grant Rule).

One commenter noted that by defining a budget revision to include the addition or deletion of an activity line item (ALI) in FTA's Transportation Electronic Award and Management (TEAM) system, the proposed circular appeared to contradict prior FTA guidance. FTA notes that this change is intentional and in the instance of any such contradictions, Circular 5010.1D supersedes prior versions of the circular.

One commenter recommended that the proposed definition for discretionary funding should be revised to read ''grant funds distributed at the discretion of the agency, or Congress, as distinct from formula funding.'' Except for ''or Congress,'' FTA has incorporated this language into the final version of Circular 5010.1D.

Another commenter suggested that FTA revise its definition of straight line depreciation. FTA has modified its definition accordingly.

Another commenter asked FTA to define ECHO. FTA has added a definition of ECHO-Electronic Clearing House Operation.

One commenter noted discrepancies in FTA's use of the term ''force account.'' This same commenter asked FTA to add information about the Catalog of Federal Domestic Assistance (CFDA). The definition of force account has been revised and Catalog of Federal Domestic Assistance has been added to the definition section.

Another commenter asked FTA to clarify whether a Native American tribe is considered a local government authority. FTA has edited the introduction section to include federally recognized Indian tribes and a definition of Tribal Government from 43 U.S.C. 1601.

One commenter asked FTA to state that the Common Rule (49 CFR part 18) applies to all FTA grantees. FTA has added language making clear the applicability of the Common Rule.

B. Chapter II—Circular Overview

Chapter II provides an overview of Circular 5010.1D, including applicable program descriptions, grant management responsibilities, and Federal civil rights requirements.

One commenter suggested that the applicable program descriptions should include fewer details. FTA disagrees. FTA is using the same program descriptions in all of its circulars to reduce the need for ad hoc revisions to each circular whenever programs change.

The same commenter asked FTA to consider adding under its role that FTA may utilize a Project Management Oversight Consultant to aid in its management of grants. FTA declines to make this revision, noting that this is explained in Chapter V, Oversight.

One commenter said it was redundant for FTA to provide an introduction under the heading ''Responsibilities of Grant Management'' and to add another list of specifications. FTA disagrees. These sections are similar but not identical.

Another commenter asked FTA to review the list of Civil Rights requirements to ensure that it includes the proper thresholds. FTA has updated Circular 5010.1D accordingly.

C. Chapter III—Grant Administration

Chapter III discusses the mechanics and requirements for grant administration, including the grant application process, reporting requirements, and grant modifications (including budget revisions).

One commenter noted that FTA's TEAM system requires FTA approval on all budget revisions. As noted, TEAM does not recognize the difference between budget revisions that do and do not require FTA approval. Accordingly, grantees may continue to make certain budget revisions without prior FTA approval.

This same commenter asked FTA to add descriptions of size and physical characteristics to Subsection 4.a(3)(e). FTA declines to add more detail to this subsection, for any change in size or physical characteristic would require FTA approval. Even the smallest change in the size or physical characteristic, such as the difference between surface or structured parking, could affect FTA and grantee responsibilities under the National Environmental Policy Act or other Federal requirements.

One commenter urged FTA to enlarge the universe of changes that may be made without pre-approval. FTA disagrees with this commenter. Circular 5010.1D strikes a balance between flexibility and good stewardship. To allow greater flexibility would risk the misuse of Federal funds.

With respect to spare vehicles, another commenter suggested that as long as the spare ratio requirements are maintained and funds are available within the rolling stock scope or other scopes, FTA should permit grantees to make revisions regarding fleet number without prior FTA approval. FTA disagrees with this commenter. Prior FTA approval must be obtained for revenue rolling stock, whenever the budget revision changes the number of vehicles to be purchased by more than two units (for grants with fewer than 10 vehicles) or more than 20 percent from the quantity identified in the original grant. The grantee must continue to meet FTA bus spare ratio requirements for any change in the number of revenue rolling stock. If the change in the number of revenue rolling stock exceeds 20 percent, the budget revision must be supported by a Rolling Stock Status Report.

Another commenter noted that the addition or deletion of ALIs represents significant changes to the purpose of a grant and asked FTA to clarify the difference between revisions and amendments. This same commenter asked FTA to establish time limits for processing budget revisions and to advise grantees whenever administrative amendments are anticipated. FTA appreciates these suggestions. With respect to the difference between budget revisions and grant amendments, FTA has included language in Circular 5010 distinguishing between budget revisions, administrative amendments, and grant amendments.

A budget revision is any change within the scope that impacts budget allocations of the original grant. A budget revision may be a transfer of funds within a project scope or between existing ALIs within an approved grant. It could also include the addition or deletion of an ALI.

An administrative amendment is a minor change in a grant agreement normally initiated by FTA to modify or clarify certain terms, conditions, or provisions of a grant. A grant amendment is the modification of a grant that includes a change in scope and/or a change in Federal funds. With respect to establishing time limits for processing budget revisions and grant amendments, FTA agrees with the commenter but believes that such timeframes are best made through internal standard operating procedures (SOPs) and not through this circular.

FTA proposed requiring prior approval for budget revisions for all grants with a Federal share of more than $100,000 and if the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent. One commenter asked FTA to rethink the $100,000 threshold. This commenter suggests applying the 20 percent rule to all grants, regardless of whether the Federal share exceeds $100,000. The $100,000 threshold is based on the Common Grant Rule requirements at 49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

One commenter asked FTA to inform the grantee when FTA is about to take any unilateral action with respect to a grant, especially if that action relates to closing out a grant. FTA agrees. Although it is common practice to inform the grantee of such actions, FTA will reemphasize the need to contact grantees before taking unilateral action to close out a grant.

This same commenter asked FTA to explain why the ''details'' section in TEAM limits text to 60 characters. FTA instructs its grantees to use the attachment feature if 60 characters are insufficient.

One commenter pointed out that, contrary to its statement in the **Federal Register**, FTA did not indicate in proposed Circular 5010.1D how it has changed its use of the term ''scope.'' FTA agrees with this commenter and clarified the definitions of scope and activity line items (ALIs).

Milestone/progress reporting for all Section 5309 grant recipients, regardless of location and population area, has been revised to reflect the requirement to submit quarterly reports in TEAM when grants include construction of a facility.

In the records retention section of its proposed guidance, FTA noted that photocopies are acceptable. One commenter asked FTA to expand this policy to include other formats such as microfiche or digitally scanned documents. FTA has examined this comment and added language to Circular 5010.1D that allows for other formats.

D. Chapter IV—Project Management

Real property, equipment and supplies, rolling stock, and facilities purchased or constructed for project purposes must be managed, used, and disposed of in accordance with applicable laws and regulations. Chapter IV provides guidance on the management, use, and disposition of FTA funded real property, equipment, supplies, rolling stock, and facilities.

One commenter asked why FTA decided to include real property in its Grant Management Circular and not in its Procurement Circular. FTA notes that it may need to include a section on real property in its Procurement Circular, but declines to remove it from Circular 5010.1D.

Another commenter applauded FTA's proposal to raise the threshold for appraisal concurrence from $100,000 to $500,000, but asked FTA to consider increasing the threshold to $1,000,000. While FTA appreciates this comment, it is still common for FTA to discover incorrect appraisals. For this reason, FTA will not increase the threshold to $1,000,000.

One commenter asked FTA to better explain the conditions that may warrant the use of a grantee's own labor forces, commonly referred to as force account. FTA has added the following conditions to Circular 5010.1D: (1) Cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement.

A commenter stated that FTA should require its grantees to notify FTA of excess land as soon as it becomes excess, and asked that such notification include a disposition proposal and schedule for disposition. FTA does not agree with this commenter. Grantees must notify FTA when property is removed from the service originally intended. The notification must include the anticipated disposition or action proposed.

Previously, FTA would rely upon a grantee's expertise when determining the useful life for assets other than rolling stock. One commenter asked FTA to continue this practice instead of fixing a useful life for all assets. FTA disagrees with this commenter. By establishing a useful life for facilities, FTA ensures consistency across projects and regions. Where a useful life policy has not been defined by FTA, the

grantee, in consultation with the FTA regional or metropolitan office shall ''make the case'' by identifying a useful life period for all equipment and facilities with an acquisition value greater than $5,000 to be procured with Federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with Federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the Federal interest for the disposition of the project property in later years. Acceptable methods to determine useful life include but are not limited to:

(a) Generally accepted accounting principles.

(b) Independent evaluation.

(c) Manufacturer's estimated useful life.

(d) Internal Revenue Service guidelines.

(e) Industry standards.

(f) Grantee experience.

(g) The grantee's independent auditor who needs to concur that the useful life is reasonable for depreciation purposes.

(h) Proven useful life developed at a Federal test facility.

Useful Life of a fixed guideway electric trolley-bus with rubber tires obtaining traction from overhead catenary has been revised to be 15 years from previously proposed 18 years.

One commenter stated that FTA's proposal concerning vehicles removed from service because of fire, collision, or natural disaster inappropriately shifts risk to its grantees, noting that the existing circular looks to the post-event value of the vehicle to measure the remaining Federal interest while the proposed circular would refer to the pre-event value. This commenter urged FTA to maintain the existing policy. FTA disagrees. The policy articulated in Circular 5010.1D is consistent with FTA's Master Agreement and current FTA practice. Similar to Circular 5010.1D, Section 19.h(b)(1) of FTA's Master Agreement states that the fair market value of project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

One commenter asked FTA to consider adopting the practice of communicating directly with the grantee receiving a new grant award, perhaps by modifying TEAM to include a facility for automatically advising grantee contacts by e-mail when FTA revises the grant's status or inputs comments. FTA is looking at improving TEAM accordingly. In the meantime, FTA's regional offices will make every effort to contact grantees when modifying a grant application or award.

Several parties offered comments on the reporting requirements articulated in proposed Circular 5010.1D. Please note that FTA has made its best effort to avoid duplicative reporting requirements. Moreover, FTA notes that the reporting requirements may vary depending on the size of the grantee, the type of funding, or the amount of funding a grantee receives. Please contact the regional or metropolitan office with questions regarding the applicability of the reporting requirements of Chapter III. With respect to requiring grantees to state the useful life of an asset in its grant application, FTA is ensuring that it can verify the use and disposition of that asset throughout its useful life.

Another commenter identified several misnumbered sections in this chapter. FTA has corrected these errors.

A State DOT asked FTA to clarify language regarding its Equal Employment Opportunity programs to apply to more than just transit agencies. FTA has modified Chapter III accordingly.

The same commenter noted that the National Transit Database Safety and Security Reporting requirement is exclusive to urban areas. FTA agrees and has clarified this point.

Another State DOT asked FTA to note that there is no minimum vehicle threshold for reporting in the nonurbanized program. FTA agrees and has modified Circular 5010.1D accordingly.

One commenter stated its understanding that 49 U.S.C. 5334(h)(1)–(3) applies to transferring property that has not met useful life standards, and suggested that FTA amend the circular text to include this statement. FTA agrees and has modified Circular 5010.1D accordingly.

The same commenter noted that insurance proceeds set the current fair market value of an asset and that the Federal share is based upon this number. FTA refers this commenter to the following language from FTA's Master Agreement: In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

One commenter identified several inadvertent omissions from the section on real property. FTA has updated this section in accordance with the Department's Uniform Relocation Act regulations.

Two parties asked FTA to distinguish between rebuilding and overhauling a vehicle or system. Accordingly, FTA has updated Circular 5010.1D to distinguish between overhaul and rebuild. Overhaul is performed as a planned or concentrated preventative maintenance activity and is intended to enable the rolling stock to perform to the end of its original useful life. Rebuild is a capital expense incurred at or near the end of the useful life of rolling stock that results in a new useful life for the rolling stock that is consistent with the extent of the rebuilding.

One commenter asked FTA to clarify when a grantee or recipient must return insurance money that it receives from a subrecipient. FTA's Master Agreement in Section 19, Subsection i states that if the recipient receives insurance proceeds as a result of damage or destruction to the project property, the recipient agrees to: (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or (2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

Another commenter asked FTA to clarify when a grantee should submit a Project Management Plan (PMP) to FTA as a prerequisite to grant approval. According to FTA's Project Management Oversight rule, 49 CFR part 633, for all major capital projects, the grantee must submit a PMP as part of its grant application.

Several commenters expressed concern that FTA proposes to include useful life determination in grant agreements and that the minimum threshold for such determinations is $5,000. FTA disagrees with these commenters. According to the Common Grant Rule, every asset over $5,000 must be accounted for. Indirectly, this means that every asset over $5,000 must have a useful life.

E. Chapter V—Oversight

Chapter V discusses FTA oversight. FTA evaluates grantee adherence to program and administrative requirements through a comprehensive

oversight program. FTA's Master Agreement specifies these requirements. FTA determines compliance through self-certification, oversight review and audits, and site visits. FTA annually completes an individual Grantee Oversight Assessment Questionnaire, which serves as baseline information for each grantee's capacity to comply, and the degree of the risk the grantee's program may represent for the Federal program. Based on this information, FTA makes decisions about which grantees will receive oversight reviews during the coming year. Regional staff uses the information to develop regional oversight plans and to allocate oversight resources within the region for the upcoming fiscal year, which may include oversight reviews, regional meetings, and/or regional site visits.

One commenter asked FTA to add its Job Access Reverse Commute (JARC) and New Freedom Programs to the list of programs covered by State Management Reviews. FTA only listed programs for which it is authorized to withhold a percentage for oversight activities. FTA retains the right to review any of its programs through State Management Reviews.

F. Chapter VI—Financial Management

Chapter VI discusses the proper use and management of Federal funds FTA expects from its grantees. Financial management is one of the most important practices in the management of Federal funds.

One commenter asked FTA to define the Cash Basis of Accounting and its permissible use. Definitions have been added.

Another commenter asked FTA to clarify whether a specific form is required for documenting internal controls. FTA notes that the form checklist provided in Circular 5010.1D is not mandatory. FTA has provided it to those transit properties that do not currently do their own testing. FTA has modified Circular 5010.1D to make clear that this form is a tool, not a requirement.

G. Appendices

One commenter noted that Appendix C, Guide for Preparing an Appraisal Scope of Work, is excellent guidance and asked FTA to include a review appraisal scope of work. FTA agrees with this comment and has indicated that the Guide for Preparing an Appraisal Scope of work can also be used for a review appraisal.

Appendix D, Fleet Status Report, has been renamed and revised so as to not be confused with the Fleet Status Report screen in TEAM. The new name is Rolling Stock Status Report. The use of this report is limited to disposing of a vehicle that has met minimum useful life and fair market value is greater than $5,000, disposing of a vehicle before it reaches minimum useful life, or requesting a budget revision affecting vehicles.

Issued in Washington, DC, this 22nd day of September, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–22891 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–29125]

Third Party Contracting Guidance: Notice of Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Circular.

SUMMARY: The Federal Transit Administration (FTA) has issued FTA Circular 4220.1F, ''Third Party Contracting Guidance'' to provide comprehensive guidance to grantees and recipients of cooperative agreements (recipients) to implement third party contracting requirements that apply to FTA assisted procurements.

DATES: *Effective Date:* The effective date of this circular is November 1, 2008.

ADDRESSES: A copy of this circular and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA–2007–29125 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the circular and comments online through the Federal Document Management System (FDMS) at Web site: *http://regulations.gov.* Enter the docket number FTA–2007–29125 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

This notice does not include the final circular. An electronic version of the circular may be found on the docket: *http://regulations.gov,* docket number FTA–2007–29125, or on the FTA Web site: *http://www.fta.dot.gov.* Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at 202–366–4865.

FOR FURTHER INFORMATION CONTACT: James Harper, Director, Office of Procurement, Office of Administration, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, Room E42–332, Washington, DC 20590, phone: 202–366–1127, fax: 202–366–3808, or e-mail *James.Harper@dot.gov* for issues regarding third party contracting procedures and practices; or Kerry L. Miller, Assistant Chief Counsel for General Law, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, Room E56–314, Washington, DC 20590, phone: 202–366–1936, fax: 202–366–3809, or e-mail, *Kerry.Miller@dot.gov,* for legal issues.

Table of Contents

I. Background
II. Overview
III. Chapter-by-Chapter Analysis
A. Chapter I—Introduction and Role of the Federal Transit Administration
B. Chapter II—Applicability
C. Chapter III—The Recipient's Responsibilities
D. Chapter IV—The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs
E. Chapter V—Sources
F. Chapter VI—Procedural Guidance for Open Market Procurements
G. Chapter VII—Protests, Changes and Modifications, Disputes, Claims, Litigation, and Settlements
1. Appendix A—References
2. Appendix B—FTA Regional and Metropolitan Contact Information
3. Appendix C—Third Party Contracting Checklists
4. Appendix D—Matrices of Third Party Contract Provisions

I. Background

This notice provides a summary of FTA's Third Party Contracting Guidance final circular, and addresses comments received in response to the FTA's September 28, 2007, **Federal Register** notice (72 FR 55630). FTA's most recent enabling legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, August 10, 2005, as amended by the SAFETEA–LU Technical Corrections Act, 2008, Public Law 110–244, June 6, 2008, added new third party contracting requirements for FTA recipients. Other Federal laws and regulations have also amended certain Federal requirements or added new Federal requirements affecting third party procurements

undertaken by FTA recipients. To address these changes, FTA is re-issuing FTA Circular 4220.1E, issued June 19, 2003, and last amended in February of 2004.

FTA published proposed FTA Circular 4220.1F in the Federal Document Management System (FDMS) at Web site: *http://regulations.gov,* and in the FTA Web site: *http://www.fta.dot.gov.* FTA published a notice of availability in the **Federal Register** (72 FR 55630) on September 28, 2007, seeking public comment on the proposed circular. FTA established a November 27, 2007, deadline for comments, but extended the comment period to February 15, 2008, as announced in the **Federal Register** on October 31, 2007 (72 FR 61708).

Ten commenters responded to FTA's request for comments in response to that notice and the proposed circular. Commenters included four State departments of transportation, four regional transportation authorities, one trade association, and one private for-profit firm.

This notice does not include the final circular. An electronic version of the circular may be found on the docket: *http://regulations.gov,* docket number FTA–2007–29125, or on the FTA Web site: *http://www.fta.dot.gov.* Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at 202–366–4865.

II. Overview of the Circular

We recognize that this edition ''F'' of FTA Circular 4220.1 is substantially different from the previous FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' 06–19–03. The final FTA Circular 4220.1F (the final circular) does contain much more information and guidance than was available in the previous circular, which focused mostly on Federal requirements. In part, this results from the SAFETEA–LU amendment to 49 U.S.C. Section 5334 adding a new subsection ''(l)'' requiring FTA to publish for notice and comment any ''guidance document * * * that * * * imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.'' The final circular now describes many procedures and processes that will assist the recipient in complying with the many Federal statutory and regulatory requirements that can affect third party procurements.

Many commenters expressed the following views about the format and contents of the proposed circular as a whole:

1. Too Much Information and Complexity

Several commenters objected to the length and complexity of the proposed circular, expressing a preference for the ''tight structure and focused approach'' of the previous circular. We understand that a streamlined list of requirements can be desirable. Because we are required by law to present all matters that may have a significant effect on private interests for public comment, we have included as many subjects as possible that might directly or indirectly affect a specific FTA assisted procurement. FTA assisted procurements are subjected not only to many Federal procedural requirements, but also to many Federal requirements about the nature of property and services that may be acquired and the prospective contractors that might seek to provide them. FTA lacks authority to issue blanket waivers to those Federal requirements.

The circular's purpose is to provide guidance on how a recipient might comply with the many requirements affecting its procurements that accompany the use of Federal assistance awarded by FTA. If the recipient is prepared to forgo the use of FTA assistance to support a procurement, then the circular's guidance will not apply to that procurement. Nevertheless, we have attempted to reduce the circular's complexity and make it more user-friendly by consolidating related information in seven separate chapters. Chapter I describes the context in which the guidance takes place and FTA's role in third party contracting. Chapter II designates to whom and to what the circular applies. Chapter III outlines the recipient's general procurement responsibilities. Chapter IV describes the various Federal requirements that may affect the eligibility of prospective contractors to participate, the property and services to be acquired, the limitations imposed on the use of the property or services acquired, as well as the acquisition procedures to be used. Chapter V lists the various sources from which the recipient might acquire property and services. Chapter VI describes the procedural requirements that apply to the various procurement methods. Chapter VII closes by providing guidance on resolving contract difficulties that might emerge. Appendix A lists the various laws, regulations, executive orders, and directives referenced in the circular. Appendix B provides an updated list of FTA regional and metropolitan offices with contact information. A new Appendix C adds checklists to remind the recipient of the many Federal requirements that might apply to its procurement, with references to the various sections, subsections, paragraphs, and subparagraphs of Chapters II through VI. A new Appendix D adds clause matrices. After a recipient gains a clear understanding of the meaning of the terms used in the circular, what FTA may do, and the types of acquisitions covered by the circular, the recipient can use the later chapters of the circular as reminders of the many Federal requirements that affect various acquisitions, alternatives to the open market that may provide the property and services that are sought, and the different procedures to be used for the various methods of procurement.

Specifically, we are concerned that the recipient remains aware of the many Federal requirements that could affect the contractor that may be selected and the nature of what is being required. If concentration is focused mainly on acquisition procedures, it can be easy to lose sight of other Federal requirements that may prove difficult or expensive to administer if considered too late. While these matters were briefly noted in former FTA third party contracting circulars, mostly by reference to the Master Agreement, we disagree that they are beyond the scope of a third party contracting procurement circular. For example, a prospective contractor should be aware of the implications of entering into contracts financed with FTA assistance, such as complying with our Buy America and Charter Service regulations, government-wide environmental protections, among others, before submitting a bid or proposal in response to a recipient's solicitation. Also, the recipient may wish to consider the various sources from which the property or services it seeks may be obtained.

One commenter complained that the proposed circular would no longer be useful as a training document because it is too complex. We disagree. We believe the final circular with its focus on consolidating topics, providing more guidance and information, coupled with checklists of requirements that might be overlooked if contract awards need to be expedited, will far better serve the individuals to be trained.

One commenter asked for review aids such as worksheets, clause and certifications matrices, and model clauses. We agree that these aids could be helpful, and have included a new Appendix C with checklists including references to specific parts of the circular. FTA has also prepared a new Appendix D with matrices identifying

the various clauses and contract provisions that might be required. For examples of model clauses, we refer you to the FTA's Best Practices Procurement Manual (BPPM), which we are planning to update in the near future. We caution, however, that while these checklists and matrices will be current on the day the final circular is issued, later enacted Federal laws and regulations may not be reflected in timely amendments to the circular. FTA will attempt to update the circular as necessary, but recommends that the recipient check the Master Agreement and the FTA Web site for information about any new Federal requirements.

2. Separate Requirements From Guidance

One commenter asked whether the circular only provides guidance to FTA recipients or whether it intends to provide mandatory directions or requirements when financing third party contracts with Federal assistance. Several other commenters requested us to clearly identify distinctions between Federal requirements and guidance or recommendations or separate Federal third party procurement requirements from guidance.

FTA considers this circular to be FTA's official guidance for implementing Federal requirements. This guidance consists of FTA's recommendations for achieving compliance with the various Federal requirements that might apply to a recipient or its procurement. The actual Federal requirements are contained in the provisions of Federal statutes or in promulgated Federal regulations, and in many cases impose binding requirements on participants in FTA assisted procurements. Appendix A contains a list of many of those laws and regulations applicable to FTA assisted procurements. Executive Orders, directives, and similar publications are binding on the Executive Branch of the U.S. Government, which must implement them. While the Executive Orders and other directives to Federal agencies do not apply directly to parties or individuals outside the Federal Government, some provisions of those Orders or directives require the cooperation of parties that are not part of the Executive Branch of the U.S. Government. Consequently, FTA must gain the consent of the relevant parties to ensure compliance with the Executive Orders and Federal directives. FTA does this through the provisions of its Master Agreement incorporated by reference in each FTA grant agreement and FTA cooperative agreement. To determine what is required of the various participants in an FTA assisted project, we suggest that you review those documents.

Because this circular consists of a broad range of guidance to FTA recipients, some of that guidance will simply re-state a Federal law or regulation, while other guidance will provide one or more methods of complying with an underlying Federal law or regulation, focusing on the terms of the FTA law or regulation to clarify what is needed for compliance. Doing so will result in ''blurring of lines between legal and regulatory requirements, guidance, and commentary,'' as noted by one commenter. Throughout the final circular, however, FTA has attempted to identify those provisions that constitute Federal statutory or regulatory requirements. Information not designated as a Federal statutory or regulatory requirement in nearly all cases will be compliance guidance.

FTA is willing to give serious consideration to alternative ways a recipient may comply with the Federal laws and regulations that apply to FTA programs. In some situations, FTA is familiar with only one method of achieving compliance, and then only that method is listed in the final circular. Other situations lend themselves to various methods of compliance. In summary, an FTA recipient should review the Federal laws and regulations cited in connection with each subject of concern to learn what requirements apply to it and to other participants in its project. To determine what is required of FTA that might affect third party procurement, the recipient may also review any Executive orders and other Federal directives referred to in connection with each subject of concern as well as the relevant Federal laws and regulations. FTA's BPPM, while not official FTA guidance, includes more extensive examples of procedures, processes, or ways in which compliance with specific Federal requirements might be achieved.

A recipient seeking methods of complying with a Federal requirement other than those described in the final circular or in the BPPM should contact FTA employees and officials in its region, particularly because FTA is not authorized to provide Federal assistance for third party procurements that do not comply with Federal requirements. While many recipient actions do not expressly require approval under Federal law or regulation, if FTA finds that a third party procurement fails to comply with Federal requirements, then FTA may need to withdraw funding, obtain a refund, or offset future Federal assistance that would have been provided to the recipient. In summary, the recipient is ultimately responsible for compliance with Federal requirements. If the recipient chooses to take an action that is later determined to violate Federal law or regulations, then it can expect that the Federal Government will take remedial action.

3. Links to Relevant Documents Needed

One commenter requested us to add links to essential documents referenced in the proposed circular. We are unable to do so at this time, although we have included on-line addresses of certain resources that may be difficult to find. Be aware, however, that these addresses may change as Web sites change.

In summary, we recognize that implementing FTA's third party contracting guidance can be complicated, and that many disparate Federal requirements will apply. We expect to continue to learn from your experience in administering the many Federal requirements that apply to third party contracting. We will be monitoring the usefulness of this guidance, and we continue to be open to comments and suggestions. We value input from our recipients and others, and we urge you to communicate with FTA staff at our headquarters and regional offices regarding questions and concerns you may have and successes you experience.

4. Notification of Changes to the Final Circular

One commenter recommended that FTA provide notice and comment about all amendments or updates to the final circular, even if FTA later amends or updates the final circular because of revisions to other FTA or other Federal regulations or guidance that has undergone notice and comment.

FTA disagrees. When the revision of a circular or regulation requires the Federal Government to provide an opportunity for notice and comment, there is no need to satisfy that requirement again just to update a reference to that revised document. FTA is required by 49 U.S.C. 5334(l) to provide notice and comment and otherwise follow applicable Federal rulemaking procedures about any change that ''grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.'' FTA, however, need not provide notice and comment when making minor technical corrections, such as updating legal citations and ensuring conformity of its circulars with the latest Federal regulations or guidance that has

undergone notice and comment. FTA will notify the public of those changes as they occur.

FTA will also post updates on its Web site: *http://www.fta.dot.gov.* The recipient should register for notifications when FTA issues **Federal Register** notices or new guidance. To register for notifications, go to the FTA public Web site: *http://www.fta.dot.gov.* In the middle of the page will be a box with the following message:

Sign up for e-mail updates
The Federal Transit Administration now offers e-mail updates on various topics including **Federal Register** notices, SAFETEA–LU and others.
Please click on the link above to begin the sign-up process.

5. Editorial Comments

A few commenters recommended brief descriptions of citations, and noted editorial discrepancies and typographical errors. We agree with most of their recommendations and have made appropriate changes in the final circular.

III. Chapter-by-Chapter Analysis

This section briefly describes the contents of each chapter of the final circular and addresses public comments received in response to its September 28, 2007, and October 31, 2007, notices.

A. Chapter I—Introduction and Background

Chapter I is an introductory chapter with general information about FTA and how to contact us. It also provides a brief review of FTA's authorizing legislation, along with information about Grants.gov. It includes definitions applicable to third party contracting, and describes FTA's role in third party procurements. While contact information about FTA officials is identified in the various chapters of the final circular, if you have a question and an FTA official is not identified as a contact source, you should contact the Regional Administrator for the region in which the project is administered or the Associate Administrator for the Program under which a headquarters project is administered.

Sections 1 Through 4—Description of FTA, Its Authorizing Legislation, Contact Information, and General Background

We have edited the first four sections of Chapter I, but they otherwise remain substantially similar to those of the proposed circular provided in connection with FTA's September 27, 2007, **Federal Register** notice.

Section 5—Definitions

The fifth section of Chapter I contains definitions of various terms used in the final circular. Several commenters submitted recommendations, including requests for changes in some of the proposed definitions and requests for additional definitions.

From FTA Circular 4220.1E, we have retained the definitions of ''Best Value,'' ''FTA,'' ''State,'' and ''Third Party Contract,'' modified to accommodate comments we received.

From the ''Definitions'' subsection of the proposed circular, we have retained definitions of ''Approval, Authorization, Concurrence, Waiver,'' ''Common Grant Rules,'' ''Cooperative Agreement,'' ''Design-Bid-Build Project,'' ''Design-Build Project,'' ''Grant,'' ''Master Agreement,'' ''Non-Governmental Recipient,'' ''Electronic Commerce (E-Commerce),'' ''Property,'' ''Recipient,'' and ''Revenue Contract,'' modified to accommodate comments we received. We have separated the definitions of ''State,'' ''Local Government'' and ''Indian Tribal Government'' from the definition of ''Governmental Recipient'' without changing the meaning of those terms.

We have also added definitions of ''Cardinal Change,'' ''Change Order,'' ''Constructive Change,'' ''Force Account,'' ''Full and Open Competition,'' ''Joint Procurement,'' ''Project Labor Agreement (PLA),'' ''Public Transportation,'' ''State or Local Government Purchasing Schedule or Purchasing Contract,'' ''Unsolicited Proposal,'' and ''Value Engineering,'' to preclude misunderstanding of those subjects as they are discussed in the final circular.

As stated in the preamble to the proposed circular, we have substituted a definition of ''Recipient'' for the definition of ''Grantee'' to encompass both recipients of Federal grants and recipients of cooperative agreements. We transferred the term ''Piggybacking'' included in previous FTA Circular 4220.1E from the Definitions section of Chapter I to the Chapter V discussion of ''Assignment of Contract Rights.'' We also transferred the term ''tag-on'' included in previous FTA Circular 4220.1E from the Definitions section of Chapter I to the Chapter V discussion of ''Cardinal Changes.''

Subsection 5.a—Approval, Authorization, Concurrence, Waiver

In the definition of ''Approval, Authorization, Concurrence, Waiver,'' appearing for the first time in the proposed circular, one commenter objected to the term ''conscious written statement,'' and recommended that it be replaced with ''written sanction * * * by.'' FTA disagrees with this recommendation because not every ''approval, authorization, concurrence, [or] waiver'' constitutes a sanction. We have, however, replaced the word ''conscious'' with ''deliberate.''

Subsection 5.b—Best Value

Commenters submitted four recommendations for revisions to the definition of ''Best Value.'' We have accepted those recommendations and have redrafted the definition to emphasize that best value is one type of competitive, negotiated procurement process with award determined on the basis of other factors important to the recipient in addition to cost or price factors. In this subsection, we have replaced terms used in connection with sealed bid procurements, which implicitly require award to the low bidder, with terms suitable for negotiated procurements. We have also included a statement that the evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient, and a clarification that our list of evaluation factors appearing in the proposed circular are not an exhaustive list of acceptable evaluation factors.

Subsection 5.c—Cardinal Change

One commenter sought clarification of terms pertaining to ''changes.'' To remedy misunderstandings, we have added a definition of ''Cardinal Change.''

Subsection 5.d—Change Order

To remedy misunderstandings, we have also added a definition of ''Change Order.''

Subsection 5.f—Constructive Change

We have also revised the definition of ''Constructive Change'' in view of the same request for clarification.

Subsection 5.h—Design-Bid-Build Project

Another commenter requested that we remove the term ''at risk'' in the definition of ''Design-Bid-Build Project'' when referring to contracting for the construction portion of the project. We agree, and have made that change.

Subsection 5.i—Design-Build Project

The same commenter also requested us to broaden the definition of ''Design-Build Project'' to include projects other than transportation systems or operable segments. We agree, and have made the change.

Subsection 5.k—Force Account

One commenter's statements about our involvement in a recipient's decision to use its workforce to perform project work prompted us to add a definition of ''Force Account.''

Subsection 5.m—Full and Open Competition

One commenter's statements prompted us to add a definition of ''Full and Open Competition.''

Subsection 5.p—Indian Tribal Government

We separated the definition of ''Indian Tribal Government'' from the definition of ''Governmental Recipient.''

Subsection 5.q—Joint Procurement

We have added a definition of ''Joint Procurement'' to differentiate it from ''State or Local Purchasing Schedule or Purchasing Contract.''

Subsection 5.r—Local Government

We separated the definition of ''Local Government'' from the definition of ''Governmental Recipient.''

Subsection 5.s—Master Agreement

One commenter recommended that we change the definition of ''Master Agreement'' to conform to our explanation in the FTA Master Agreement. We agree, and have made that change.

Subsection 5.t—Non-Governmental Recipient

One recipient noted that the definition of ''non-governmental recipient'' excludes private businesses except at FTA's discretion, but does not add a definition of private business. We have used the term ''non-governmental recipient'' to mean ''recipient'' as defined in Department of Transportation (DOT) regulations, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' 49 CFR Part 19. That definition includes the term ''commercial organizations,'' which we interpret to mean ''private businesses.'' Thus we have not defined ''private business'' for purposes of the final circular. FTA intends to inform recipients that it will reserve the right to apply the provisions of 49 CFR Part 19 to all recipients not covered by 49 CFR Part 18. As provided in those regulations, the Federal Acquisition Regulation (FAR) cost principles applicable to for-profit organizations will apply to commercial organizations.

Subsection 5.u—Project Labor Agreement (PLA)

We have added a definition of ''Project Labor Agreement'' consistent with the General Services Administration's (GSA) definition of that term.

Subsection 5.v—Property

We have amended our definition of ''Property'' to replace ''real property'' with ''land and buildings, structures, or appurtenances on land.''

Subsection 5.w—Public Transportation

We have added a definition of ''Public Transportation'' in view of the amendment to the SAFETEA–LU Technical Corrections Act, which expressly restores the exclusion of ''sightseeing service'' from the definition of ''public transportation'' for purposes of 49 U.S.C. Chapter 53.

Subsection 5.x—Recipient

Another commenter requested us to include an explanation in our definition of ''Recipient'' that a ''Recipient'' does not include a third party contractor or third party subcontractor. We agree, and have made the addition requested.

Subsection 5.y—Revenue Contract

One commenter requested us to reconcile the meanings of ''Revenue Contract'' as used throughout the proposed circular. We agree, and have revised the definition for consistency with the meaning of the term as used in Chapter II, subparagraph 2.b(4).

Subsection 5.aa—State or Local Government Purchasing Schedule or Purchasing Contract

We have added a definition of ''State or Local Government Purchasing Schedule or Purchasing Contract'' to differentiate it from ''Joint Procurement.''

Subsection 5.bb—Third Party Contract

One commenter requested that the definition of ''Third Party Contract'' be amended specifically to include purchase orders and credit card purchases. We agree, and have made the change.

Subsection 5.cc—Unsolicited Proposal

We have added a definition of ''Unsolicited Proposal'' consistent with FAR standards.

Subsection 5.dd—Value Engineering

One commenter's statements prompted us to add a definition of ''Value Engineering.''

Section 6—FTA's Role

The sixth section discusses FTA's role and responsibilities with regard to third party procurements. The subsections hereunder addressing third party contract reviews, procurement system reviews, and training and technical assistance continue to be substantially similar to those of FTA Circular 4220.1E.

Subsection 6.a—Reliance on the Recipient's Self-Certification

For consistency with the Common Grant Rules, the final circular retains the proposed circular's discussion of self-certification. Specifically, the DOT's Common Grant Rule for governmental recipients, 49 CFR Part 18, permits governmental recipients to request self-certification, but does not require them to do so, nor does that Common Grant Rule permit FTA to require self-certification. The DOT's Common Grant Rule for non-governmental recipients, 49 CFR Part 19, has no provisions addressing self-certification.

Subsection 6.f—Master Agreement

Two commenters requested changes to our discussions of FTA's Master Agreement. In this subsection, we are not merely defining the Master Agreement, but are providing more information about it and how it can best be used.

Subsection 6.g—''Best Practices Procurement Manual (BPPM)''

One recipient asked us to clarify the purpose of the BPPM. We have revised this subsection that describes the BPPM to emphasize that the BPPM is not official FTA guidance applicable to the recipient, but instead is a compilation of suggested procedures, methods, and examples the recipient may use as it sees fit. Another commenter requested us to update the BPPM so that it will be a reliable resource. We are planning to update the BPPM, but are uncertain whether we will be able to maintain it so that it will always reflect accurate recommendations.

Subsection 6.h—Third Party Contracting Helpline

We have included a better Web address for FTA's Third Party Contracting Helpline.

Subsection 6.i—''Frequently Asked Questions''

We have included a reference to the FTA Web site for ''Frequently Asked Questions'' about third party contracting.

B. Chapter II—Applicability

We have restructured Chapter II to consolidate provisions pertaining to the various categories of recipients and their projects. We expanded the chapter to include additional paragraphs to respond to unanticipated comments to the proposed circular. As a result, we have transferred some provisions of the proposed circular to this chapter.

Much of this chapter retains provisions substantially similar to their counterpart provisions within FTA Circular 4220.1E or its footnotes, with important exceptions discussed below:

Section 1—Legal Effect of the Circular

After reading many of those comments, we have become aware that many of our recipients misunderstand the legal implications of FTA's circulars. As a result, we included a new section at the beginning of Chapter II to explain that the final circular, although official FTA guidance, is not a Federal mandate comparable to a Federal law or regulation.

Section 2—Applicability of the Circular

Subsection 2.a—Participants in FTA Assisted Procurements

Paragraph 2.a(1)—Recipients of FTA Grants and Cooperative Agreements

Subparagraph 2.a(1)(a)—States

As stated in the preamble to proposed FTA Circular 4220.1F, the previous FTA Circular 4220.1E inadvertently misstated FTA's long-standing practice in administering its State managed programs when it took the position that only States and State instrumentalities could use State procedures when undertaking procurements financed with FTA's funding for State managed programs. We have retained the new language of the proposed circular, which correctly states OMB's decision that FTA governmental subrecipients of States may use State procurement procedures, but non-governmental recipients of States must use the procurement procedures of the Common Grant Rule for non-governmental recipients.

Paragraph 2.a(3)—Recipients of Both Federal Assistance Awarded by FTA and Funds Provided by Another Federal Agency

While there is a general understanding that FTA requirements apply to FTA assisted procurements, one commenter asked what Federal requirements would apply if another Federal agency were also providing funding for the project. Our response is that the requirements of each agency's laws and regulations would apply to the project, and the recipient would need to take actions that would meet the requirements of all participating agencies.

Paragraph 2.a(5)—Third Party Contractors and Subcontractors

Subparagraph 2.a(5)(b)—Effect of Federal Requirements

One commenter appears to question whether federally required contract clauses must flow down to third party contractors and subcontractors because the circular does not apply directly to them. We have included a new paragraph addressing the status of third party contractors and subcontractors and have informed recipients that some Federal laws and regulations will, in effect, require the compliance of their third party contractors and subcontractors as well as the recipient. In those cases, the recipient must include adequate provisions in their solicitation documents and third party contracts.

Subsection 2.b—Third Party Contracts

Paragraph 2.b(1)—Capital Contracts

Subparagraph 2.b(1)(b)—Art

One commenter asked us to update the procurement requirements in FTA Circular 9400.1A, ''Federal Transit Administration Design and Art in Transit Projects,'' dated 06–09–95. FTA intends to do so after the end of Fiscal Year 2008.

Subparagraph 2.b(1)(c)—Over-the-Road Bus Accessibility Program

One commenter asked whether the exemption from the proposed circular's provisions applies only to FTA's Over-the-Road Bus Accessibility Program or whether all over-the-road bus procurements are also exempted. We have revised the proposed circular to clarify that the exemption applies only to the Over-the-Road-Bus Accessibility Program and does not include over-the-road buses acquired through other FTA programs.

Subparagraph 2.b(1)(d)—Real Property

Four commenters pointed out apparent inconsistencies pertaining to the application of the proposed circular to real property. While we have left the definition of ''Property'' to include ''real property,'' we agree that clarifications are needed and have revised the paragraph pertaining to real property to emphasize that the final circular does not apply to the purchase of land and existing facilities, but does apply to construction of new buildings and facilities on the land acquired for the project, and applies to alterations or repairs to buildings and facilities on the land when it was acquired or made available for project use.

Paragraph 2.b(2)—Operations Contracts

Subparagraph 2.b(2)(b)—Operations Contracts Financed Entirely Without FTA Assistance

As stated in the notice of availability of proposed FTA Circular 4220.1F, FTA has been considering whether and to what the extent its third party contracting provisions should apply to an FTA recipient's acquisitions financed entirely without FTA assistance.

For many years, FTA has taken the position that ''one dollar taints all,'' a policy in which FTA required a recipient to apply FTA requirements to all its other operations contracts, including those contracts financed entirely without Federal assistance, if the recipient uses any part of its FTA formula assistance to support any operation contract. Because recipients in large urbanized areas have not been authorized to use Urbanized Area Formula assistance for operations, operations contracts they can demonstrate were financed entirely without FTA assistance have not been required to comply with FTA requirements. In contrast, recipients in smaller urbanized areas currently must apply FTA requirements to all their operations procurements, whether or not they are financed with FTA assistance, if they use any of their Urbanized Area Formula assistance or Nonurbanized Area Formula assistance to support even one operations contract.

FTA did make exceptions for Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) assistance used for operations, determining that if a recipient could demonstrate which operations contracts CMAQ or JARC assistance supported, then the recipient's other entirely privately financed operations contracts need not comply with FTA requirements. Now that SAFETEA–LU changed the JARC program from a discretionary program to a formula program, FTA must determine whether to impose its procurement requirements on a recipient's operations contracts not financed with Federal assistance if the recipient uses its formula JARC funds for operations.

FTA also provided an exception for recipients in large urbanized areas to exempt all their operations contracts from FTA requirements provided they are able to trace their use of preventive maintenance funding to specific contracts. If, however, they are unable to

do so, and use FTA assistance for general support of preventive maintenance contracts, then FTA requirements will apply to all their operations contracts.

At the same time, FTA has been reviewing its policies pertaining to its recipients' use of other FTA assistance that finances operations contracts in connection with other project activities. Among other programs in which FTA supports the costs of project-related operations are the New Freedom Program, 49 U.S.C. 5317, the Elderly Individuals and Individuals with Disabilities Program, 49 U.S.C. 5310, the Elderly Individuals and Individuals with Disabilities Pilot Program, 49 U.S.C. 5310 note, and the National Research Program, 49 U.S.C. 5312(a), all of which involve some recipients or subrecipients that receive only a small portion of their financial expenses from FTA.

FTA expressly sought comments about the extent to which FTA requirements should be applied to a recipient or subrecipient's operations contracts financed entirely without Federal assistance. FTA also sought comments on the extent of agency operating expenses that are not related to public transportation but must comply with FTA procurement requirements under the concept that one dollar of FTA operating assistance brings an agency's entire operating budget under the FTA requirements. Specifically, FTA requested comments on the rationale for excluding other operating contracts from the applicability of FTA requirements. Those that commented overwhelmingly urged FTA to exempt all acquisition financed without any Federal assistance from Federal requirements. Most commenters believe imposing Federal requirements on acquisitions not financed with Federal assistance to be overbroad, if not unauthorized.

FTA also asked for examples of how operating expenses could be tracked and managed so that FTA assisted expenses could be segregated from other operating costs. One commenter explained that many accounting and bookkeeping systems are generally capable of identifying cost allocations sufficiently thoroughly so that the funding sources of each contract can be readily identified. Because a variety of accounting systems can identify funding sources, the commenter asked FTA not to impose a uniform accounting system that might be expensive to implement. The commenter also pointed out that FTA could monitor that process by asking recipients to state whether or not they are segregating federally assisted acquisitions, including operations acquisitions, from acquisitions financed entirely without FTA assistance, and then ask those recipients that are segregating their acquisitions to describe the methods by which they are tracking sources of funding. FTA could reserve the right to disallow the practice if the recipient's recordkeeping methods are deficient. States could monitor those practices for compliance by their recipients that qualify to use State procedures.

In considering its proposal to remove FTA's procurement requirements from operations contracts financed with FTA formula assistance, FTA is aware that doing so might diminish contracting opportunities for some disadvantaged business enterprises (DBE). To preclude that result, FTA has emphasized its position that a recipient required by DOT regulations, ''Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,'' 49 CFR Part 26, to have a DBE program may not structure its operations expenditures (or other expenditures) in a manner that removes an unreasonable proportion of contracts that could have been performed by DBEs from its DBE program. Accordingly, we expressly sought comments estimating the impacts on DBE participation that might accompany FTA's proposed policy change that would permit all recipients to separate their FTA assisted operations contracts from their other operations contracts receiving no FTA assistance. However, we did not receive any comments directly addressing prospective adverse impacts on DBE participation that might result from that change.

One commenter advised that applying DBE requirements broadly to all procurements might well invalidate the entire DBE program. FTA does not intend to require each FTA assisted procurement to be included in a recipient's DBE program. Nevertheless, a recipient that enters into a third party contracts for operations or planning must comply with the requirements of the DBE regulations. Therefore, FTA maintains that a recipient required to have a DBE program may not structure its operations expenditures (or other expenditures) in a way so that an unreasonable proportion of contracts that could be performed by DBEs are removed from its DBE program.

After considering the comments we received, FTA has determined not to require any FTA recipient to apply FTA statutory and regulatory requirements to acquisitions that the recipient can demonstrate conclusively it has been financed entirely without FTA assistance. In exempting the recipient from FTA requirements that have in the past affected its procurements, however, we caution the recipient that FTA cannot exempt a recipient from other Federal requirements that may apply irrespective of whether or not the acquisition were financed with Federal assistance. An example would be Federal requirements for accessibility for individuals with disabilities that would apply to a recipient irrespective of whether or not Federal assistance were made available for an activity undertaken by the recipient. FTA assisted procurements, however, must comply with all applicable Federal requirements.

Paragraph 2.b(3)—Preventive Maintenance Contracts

In the paragraph pertaining to the application of FTA requirements to preventive maintenance contracts, one commenter asked us to identify ''discrete.'' Rather than defining ''discrete,'' we have substituted the term ''separate and distinct'' in the final circular.

Paragraph 2.b(4)—Revenue Contracts

One commenter objected to an FTA requirement that revenue contracts be awarded ''utilizing competitive procedures and principles,'' asking instead that we reinstate the distinction between situations that offer unrestricted access to similar users and situations that can provide only limited access to similar users. We agree, and have made that change in the final circular.

Paragraph 2.b(6)—Public-Private Partnerships

One commenter asked us to describe or define the contract delivery arrangements or project delivery systems listed in the proposed circular in connection with public-private partnerships (PPPs). Because we did not want to duplicate information previously published, we have included a reference to the FTA ''Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications,'' 72 FR 2583–2591, January 19, 2007, which includes a description of the various contract delivery arrangements or project delivery systems in the context of PPPs.

One commenter proposed that we designate as PPPs only those partnerships that include both project delivery and operations. FTA disagrees. Structured in multiple forms, PPPs can vary greatly according to the scope of responsibility and degree of risk

assumed by the private partner for project activities. The same commenter pointed out that design-build (with or without a warranty) and construction manager at risk are variations on the design-bid-build method of project delivery. We agree that design-build (with or without a warranty) and construction manager at risk are project delivery systems but consider that projects with those attributes can constitute a PPP because the private partner or partners undertake the recipient's function of selecting the construction firm, and assume the risk of delivering the entire project.

In all eight categories of PPPs we have identified, the private partner undertakes in part the duties usually performed by the recipient and assumes some of the recipient's financial risk. Moreover, FTA's ''Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications,'' 72 FR 2583–2591, January 19, 2007, expressly acknowledges all eight types of PPPs listed in the proposed circular.

Two commenters objected to our discussion of PPPs and joint development as too intrusive. One commenter complained that having to craft individual arrangements with FTA for each project would be unduly time-consuming, recommending that FTA establish objective principles for our participation in those projects. We agree that objective FTA principles for PPP participation would be helpful. As a result of our experience with joint development projects, we have excerpted parts of our ''Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law,'' 72 FR 5788, February 7, 2007, which contains third party contracting guidance we have found useful. As we gain more experience with joint development projects and other PPPs, we will issue further guidance as appropriate.

Paragraph 2.b(7)—Transactions Involving Complex Financial Arrangements

Two commenters offered recommendations about the role of an ''arranger'' or facilitator in complicated financial transactions involving FTA assisted property. One commenter pointed out that the arranger is usually paid with the proceeds of the transaction resulting from the use of FTA assisted property, and indicated that the arranger should be selected using competitive procedures. Because FTA is not sure that arrangers are always paid in part with FTA assistance or the proceeds derived from the use of FTA assisted property, we have not imposed that mandate. However, when an arranger is compensated with proceeds derived from the use of FTA assisted property, we have stated our expectation that the recipient would use competitive procedures to select its arranger. In addition, one commenter recommended that FTA strengthen conflict of interest procedures applicable to arrangers to ensure that an arranger does not personally benefit by using his or her company or other companies in which he or she has a financial interest. In this matter, FTA believes it appropriate to rely on the recipient's conflict of interest requirements and procedures to prevent unfair dealing.

Paragraph 2.b(8)—Force Account

One commenter recommended that we clarify that the final circular does not apply to a recipient's force account work. We agree, and have added a paragraph stating that the final circular's third party contracting guidance does not apply to force account work.

Section 3—Federal Laws and Regulations

Subsection 3.c—Other Federal Requirements

Paragraph 3.c(1)—Compilation in the Master Agreement

We received two comments about the significance of the Master Agreement. One commenter suggested we add a paragraph discussing the Master Agreement in much greater detail. We have included a reference to the discussion of the Master Agreement in Chapter I, subsection 6.f of the final circular, instead of repeating that information in Chapter II. Because the purpose of discussing the Master Agreement here is to identify it as a resource identifying Federal requirements, among other things, we have revised the heading of that paragraph in the final circular. Another commenter complained that the Master Agreement is not a useful means of communicating procurement requirements to recipients. Although we agree that the Master Agreement does not provide explicit procurement guidance to recipients, we have found that the Master Agreement is one of the most useful means of providing recipients a reasonably current compilation of the many Federal requirements that apply to FTA assisted projects.

Paragraph 3.c(2)—Conflicting Federal Requirements

One commenter asked which FTA official or officials should be notified of conflicting Federal laws and regulations when more than one Federal agency provides support for an FTA assisted project. The final circular advises the recipient to notify the FTA Chief Counsel in writing.

Section 4—State and Local Laws and Regulations

Subsection 4.b—Conflicts Between Federal Requirements and State or Local Requirements

The same commenter also asked who should be notified when conflicting Federal and State requirements apply to a project. Our response is that the recipient should notify the Regional Counsel for the region in which the project is being administered or the Assistant Chief Counsel for General Law for those projects administered by FTA headquarters staff.

The proposed circular noted that in the case of a conflict between State and local laws, it might be necessary for FTA to terminate the project if no resolution were available. One commenter sought an explanation of how this might occur. Since the inception of the FTA program, FTA has required recipients to comply with Federal requirements. In a relatively few instances, recipients have needed to persuade their State legislatures to enact special legislation that would permit the recipient to comply with Federal laws and regulations to permit its project to continue. For that reason, the recipient should notify FTA in writing as soon as possible when conflicts between Federal and State laws or regulations occur. FTA is willing to work with the recipient in seeking and implementing an equitable resolution.

Two other commenters opposed the proposed circular's termination provisions, claiming among other reasons that the recipient's counsel, not FTA, should be authorized to determine what requirements apply, and that FTA enforcement of Federal laws inconsistent with State laws would effectively pre-empt State or local laws. First of all, FTA makes every effort to avoid the need to terminate Federal assistance for a project due to conflicting Federal and State or local laws or regulations. When such situations arise, occasionally they have been resolved by efforts the recipient has made to persuade its State legislature to amend the conflicting law, at least to the degree necessary to permit FTA assistance to be used. FTA is not

authorized to waive Federal requirements except to the extent permitted by the underlying Federal laws and regulations. If a Federal law or regulation contains a requirement that FTA may not waive, FTA has no choice but to insist on the recipient's compliance as a condition of FTA assistance. If the Federal Government terminates Federal assistance for a project based on the recipient's failure or inability to comply with Federal law or regulations, FTA's position is that the termination would not be a Federal pre-emption of State or local law. The decision of whether a Federal agency will provide or continue Federal assistance for a specific project is separate and distinct from a Federal decision to pre-empt State or local law.

C. Chapter III—The Recipient's Responsibilities

Apart from specific procurement procedures discussed at length in Chapter VI, this chapter consolidates the recipient's procurement responsibilities. We have retained much of the information included in FTA Circular 4220.1E, but we have also added information about Common Grant Rule provisions not discussed in that circular.

Section 1—Written Standards of Conduct

Subsection 1.a—Personal Conflicts of Interest

Three commenters objected to the personal conflict of interest prohibitions as written in the proposed circular. The Common Grant Rules and FTA Circular 4220.1E prohibit personal conflicts of interest by prohibiting contract activities that ''would'' result in a real or apparent conflict of interest, while the proposed circular would prohibit personal conflicts of interest by prohibiting contract activities that ''could'' result in a real or apparent conflict of interest. We agree with the commenter who pointed out that changing ''would'' to ''could'' broadens the standard from predictable to speculative. In drafting the proposed circular, FTA did not intend to deviate from Common Grant Rules standards or otherwise amend FTA's current standards. Accordingly, we have revised this provision by substituting ''would'' for ''could,'' consistent with Common Grant Rules standards.

Section 2—Self-Certification

We received no comments on self-certification, except in the context of some commenters' objections to statements recommending FTA review of particular matters before the recipient takes action. Those commenters argued that FTA reviews of prospective actions diminish prerogatives they should have due to their self-certification. They apparently believe that by acknowledging their self-certification, FTA is endorsing the correctness of a self-certified recipient's procurement decisions. Our response is that certain FTA reviews and approvals are required by Federal laws and regulations irrespective of self-certification. Other reviews FTA recommends are intended to preserve the recipient's ability to use FTA assistance to support the procurement by helping the recipient avoid an inadvertent violation of Federal laws or regulations, some of which can be complex.

Section 3—Third Party Contracting Capacity

Section 3 contains discussions of the requirements for third party contracting capacity, adequate contract provisions, and an adequate procurement history that are substantially similar to their FTA Circular 4220.1E counterparts. We have added other subsections to the final circular, such as recordkeeping, that were omitted from FTA Circular 4220.1E but addressed in the Common Grant Rules.

Two commenters objected to the provision in Section 3 stating that contractors providing procurement expertise or support to the recipient ''should be unrelated to and independent of any potential bidder or offeror.'' The commenter explained that prospective bidders or offerors frequently know others with necessary procurement expertise, and forbidding the use of those sources would unnecessarily reduce the availability of expertise a recipient might need. We agree with that commenter and have changed the standard to one that calls for preventing or ameliorating organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or result in an unfair competitive advantage.

Subsection 3.c—Industry Contracts

One commenter noted that our caution about using industry contracts, while reasonable in certain situations, might be unwarranted if construed too broadly. Specifically, the commenter expressed the belief that there are advantages to using well-known industry developed forms, such as the AIA forms used in the construction industry or payment request forms and similar documents whose contract terms and clauses are familiar to contractors performing the work. In other situations, a recipient should be able to solicit specifications or contract terms for possible use in a future solicitation. We agree that judicious use of standard forms, specifications, and contract terms may be justified in certain situations, and have revised the subsection on industry contracts to clarify that the recipient may use them if they can accommodate Federal requirements.

Subsection 3.e—Special Notification Requirements for States

Two commenters had concerns about the project and contract notification requirements for States that have been included in DOT's annual appropriations acts for the last few years. FTA Circular 4220.1E described former Appropriations Act notification requirements having a $500,000 threshold that applied to all FTA recipients. In contrast, the DOT Appropriations Acts in the last few years have limited their notification requirements to States, but no longer recognize a $500,000 threshold. Now each State must include statements in all its requests for proposals, solicitations, Federal assistance applications, forms, notifications, press releases, or other publications involving FTA assistance that FTA is or will be providing Federal assistance for the project, the amount of Federal assistance FTA has provided or expects to provide, and the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance.

One commenter asked whether, when issuing its announcements, it really must include the CFDA Number for the FTA program under which the project is supported. FTA's position is that because identification of the CFDA number is expressly required by the recent DOT appropriation acts, the recipient must include the requisite CFDA number. The commenter also asked whether the requirement for States must flow down to its subrecipients. FTA interprets the appropriations laws to require compliance with those notification requirements by the State's subrecipients, lessees, or third party contractors at any tier, and we have included a provision in the final circular to that effect.

Another commenter has requested FTA to discuss this notification requirement in its grant management circulars and to take other measures to communicate with States directly about these broad notification requirements. We agree and will make special efforts to inform the States of these requirements.

Subsection 3.f—Use of Technology/ Electronic Commerce

One commenter recommended that FTA expressly endorse a more extensive use of electronic contracting, including electronic bidding and reverse auctions, and that FTA permit the recipient to engage contractors to perform those services. FTA approves the use of electronic bidding and reverse auctions for third party procurements of $100,000 or less and, if permitted under State or local law, for third party procurements of a greater value. A recipient may perform electronic contracting using its own staff or may engage one or more contractors to act on its behalf.

Section 4—Audit

We received no comments on this section of Chapter III.

D. Chapter IV—The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs

We have restructured Chapter IV to consolidate provisions pertaining to the various categories of recipients and their projects. We expanded the chapter to include additional paragraphs in response to comments on the proposed circular. As a result, some of the guidance originally included in other chapters of the proposed circular has been transferred to this chapter of the final circular.

However, much of this chapter retains provisions that are substantially similar to their counterpart provisions in FTA Circular 4220.1E or its footnotes, with important exceptions discussed below.

Section 1—Determining the Recipient's Needs

One commenter suggested that the acquisition planning and project management functions addressed in this chapter should not be included in a circular focused on third party contracting guidance. FTA disagrees. FTA considers procurement procedures to be only one aspect of third party contracting. The fundamental purpose of procurement is to acquire property and services that meet the purchaser's needs. The type, amount, characteristics, and features of the property or services an FTA recipient seeks and conditions under which the property and those services are acquired must satisfy Federal requirements that apply to federally assisted procurements if the recipient intends to use FTA assistance to support the costs of the property or services it procures. For an FTA recipient, these requirements will encompass Federal requirements focused on FTA acquisitions as well as general Federal requirements that apply to all federally assisted acquisitions.

For example, some Federal requirements may change the way a contractor fabricates and delivers property; others will affect how the contractor provides the requested services, the amount of wages it must pay, and the labor protections it must provide to some or all employees. As a result, to assure that FTA assistance can be used to support the costs of property and services a recipient seeks, it is important that the recipient's acquisition comply with all of the many applicable Federal laws and regulations having an indirect effect, if not a direct effect, on the property or services to be acquired and also on the contractor that provides the property and services.

FTA believes it important that the recipient be fully aware of these requirements and restrictions at the time it begins to determine the types of property and services it needs. FTA cannot support a recipient's procurement that in some way has violated one or more Federal requirements. Thus FTA cautions the recipient to examine its initial preferences in light of Federal requirements before undertaking a procurement for which it intends to use FTA assistance. As an aid, we refer you to the checklists in Appendix C. In the course of developing the checklists identified with specific provisions of the final circular, we have consolidated requirements pertaining to specific aspects of procurement in separate chapters, and thus have found it necessary to transfer some information from Chapter IV of the proposed circular to Chapter VI of the final circular, which provides procedural guidance for open market procurements.

Subsection 1.a—Eligibility

The property or services a recipient acquires with FTA assistance must be eligible for Federal support. One commenter requested a more definitive explanation of eligibility and requested examples. We have expanded that explanation to focus on the requirements for eligibility under Federal law as well as eligibility under the scope of the specific project supported by the FTA assistance to be used.

Subsection 1.b—Necessity

Paragraph 1.b(1)—Unnecessary Reserves

One commenter expressed concern about FTA's position that the recipient's acquisitions be limited to its immediate needs, especially when followed by prohibitions against the procurement of excess capacity for assignment purposes (which FTA does permit in limited circumstances). The commenter asked whether the recipient can and should rely on its own understandings about what it needs or whether FTA is, in effect, prohibiting cooperative procurements.

We have revised this discussion for clarity. FTA's decision to limit participation in the costs of acquisitions to only that property or services the recipient requires to fulfill its immediate needs, is justified by the requirements of the Common Grant Rules. In monitoring whether a recipient has complied with its procedures to determine what property or services are necessary, FTA bases its determinations on what would have been a recipient's reasonable expectations at the time it entered into the contract.

Paragraph 1.b(2)—Acquisition for Assignment Purposes

FTA recognizes that a recipient's later needs might decrease due to changed circumstances or even honest mistakes. In those cases, it is appropriate for a recipient to assign its extra contract authority to another entity needing the property or services. Although it may be difficult to determine precisely, FTA expects the recipient to make a concerted effort to measure its actual immediate needs carefully before entering into a procurement. A recipient should be cautious about acquiring contract rights whose use or disposition is genuinely uncertain at the time of contract award, except if the contract is intended to support State or local purchasing schedules.

Subsection 1.c—Procurement Size

Other commenters raised concerns that the guidance would prohibit cooperative procurements. We understand that by ''cooperative procurements,'' the commenters are referring to what we designate as ''joint procurements,'' meaning a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. This restriction does not preclude joint (cooperative) procurements because a joint (cooperative) procurement is intentionally developed to meet the actual, immediate needs of the two or more parties that seek to acquire similar property or services, as discussed more fully below. Nor does this restriction apply to a State that enters into contracts with various vendors to

establish State Purchasing Schedules for its convenience and the convenience of its authorized users.

One commenter has expressed the opinion that market conditions are not the usual reason for using joint or cooperative procurements, maintaining that joint procurements result when they are economically advantageous. FTA disagrees on the grounds that market conditions can affect what is economically advantageous to a recipient. We have, however, revised the Procurement Size paragraph of the final circular to emphasize the importance of economic advantage to the recipient.

Other commenters requested FTA to acknowledge that ''grantees are not responsible for the actions of other grantees, even when conducting joint or cooperative procurements.'' FTA is unwilling to make that change. FTA generally holds recipients responsible for compliance with Federal requirements by all participants in its project, apart from a few exceptions involving designated recipients in FTA's Urbanized Area Formula program that relinquish their responsibilities to other grantees.

Section 2—Federal Requirements That May Affect a Recipient's Acquisitions

One commenter recommended that FTA remove the references to its Master Agreement, maintaining that they are inapplicable to the discussion of Federal laws and regulations in this chapter. We disagree, but have transferred our discussion of the Master Agreement to the introductory paragraphs of Chapter I, subsection 6.f of the final circular, which provides a general discussion of Federal Requirements that may affect a recipient's acquisitions.

Subsection 2.a—Contractor Qualifications

Paragraph 2.a(2)—Debarment and Suspension

One commenter has informed us that its State maintains its own debarment and suspension list, and that it checks both the Federal and State lists for debarments and suspensions. FTA has no objection to a recipient precluding a prospective participant included in a State debarment or suspension list from participating in an FTA assisted project, even if that prospective participant is not included in GSA's Excluded Parties List System (EPLS).

Paragraph 2.a(5)—Federal Civil Rights Laws and Regulations

Subparagraph 2.a(5)(b)—Nondiscrimination on the Basis of Sex

We added a subparagraph reminding the recipient that its third party contractors must comply with Federal laws and regulations pertaining to nondiscrimination on the basis of sex.

Subparagraph 2.a(5)(c)—Nondiscrimination on the Basis of Age

We added a subparagraph reminding the recipient that its third party contractors must comply with Federal laws and regulations pertaining to nondiscrimination on the basis of age.

Paragraph 2.a(6)—Socio-Economic Development

Subparagraph 2.a(6)(a)—Disadvantaged Business Enterprises (DBE), and

Subparagraph 2.a(6)(b)—Small and Minority Firms and Women's Business Enterprises

One commenter objected to the application of both DOT's DBE regulations and the Common Grant Rules' participation preferences for small and minority firms and women's business enterprises. FTA disagrees with the commenter. At a minimum, each recipient must comply with DOT's general DBE regulatory prohibition against discrimination, 49 CFR 26.13, irrespective of whether the recipient is required to have a DBE program. A recipient required to have a DBE program must comply with the provisions of its program. All Federal recipients, including FTA recipients, must comply with the Common Grant Rules' provisions concerning participation by small and minority firms and women's business enterprises. FTA believes it is possible to comply with both the DOT's DBE regulations and the Common Grant Rules, because the Common Grant Rules for participation by small and minority firms and women's business enterprises do not require fixed goals or actions, such as extending the reach of DBE program requirements to all minority firms and women's business enterprises that would not otherwise qualify for inclusion under DOT's DBE regulations. These regulations contain no provisions requiring them to be mutually exclusive.

Paragraph 2.a(7)—Sensitive Security Information

One commenter asked whether the Federal ''Protection of Sensitive Security Information'' requirements of 49 U.S.C. section 40119(b) and its implementing DOT regulations, ''Protection of Sensitive Security Information,'' 49 CFR Part 15, and 49 U.S.C. 14(s) and its implementing Department of Homeland Security (DHS) regulations, ''Protection of Sensitive Security Information,'' 49 CFR Part 1520, actually apply to FTA assisted procurements and must be included in third party contracts. The commenter believes those regulations are targeted mainly on airlines.

While recognizing the focus on airline security, FTA has determined that these laws and regulations do apply to public transportation agencies and other FTA recipients that have sensitive security information, such as information related to vulnerability assessments (including any information addressing vulnerabilities or corrective actions) conducted after September 11, 2001, and other information covered by the regulations. Therefore, FTA's view is that recipients must include requirements for compliance with those regulations in their third party contracts to assure that their contractors will take the necessary steps to protect any sensitive security information within their control.

This determination is based on the DHS Interim Final Rule issued in 2004 that extended sensitive security information protections to all forms of transportation coupled with the Transportation Safety Administration and DOT amendments to their regulations removing limiting references to ''aviation or maritime'' in their regulations at 49 CFR Parts 1520 and 15, respectively. *See,* 70 FR 1379, January 7, 2005.

Paragraph 2.a(8)—Seat Belt Use

One commenter asked for a model contract clause for Seat Belt Use with flowdown requirements in the final circular or FTA's BPPM. We have not included a model clause in the final circular but will draft one for inclusion in the BPPM.

Subsection 2.b—Administrative Restrictions on the Acquisition of Property and Services

Notably we have re-arranged the format of this subsection to group topics for easier usage in conjunction with the new checklists we have included in Appendix C.

Paragraph 2.b(3)—Period of Performance

Four commenters objected to the period of performance provisions in the proposed circular. One commenter found our period of performance discussion confusing. We have restructured that discussion as

requested. Two other commenters objected to our statement that the third party contract terms be no longer than ''minimally necessary'' as unduly restrictive and not found in applicable law. Our response is that this is not a new standard. In fact, FTA Circular 4220.1E, the predecessor to the final circular, also provided that, ''Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract.'' We understand, however, that if a recipient takes that guidance to an extreme, allowing no reasonable period to accommodate even small performance delays, then the guidance would be undesirable. We have therefore removed the ''minimally necessary'' standard, replacing it with guidance that the recipient is expected to establish a period of performance consistent with ''the time necessary to accomplish the purpose of the contract.''

Four commenters also objected to the position that every time extension would constitute an out-of-scope change requiring a sole source justification. One commenter seems to believe that we would treat all time extensions not contemplated in the original contract as out-of-scope changes. This provision, which is included in FTA Circular 4220.1E, is not new. Nevertheless, we agree that a time extension can sometimes be a legitimate remedy in circumstances beyond the recipient's control, and should not in all cases be considered an out-of-scope change. In other instances, however, the circumstances surrounding other time extensions, especially those in which significant new deliverables would be added, would be an out-of-scope change. We have revised the final circular accordingly.

Paragraph 2.b(5)—Payment Provisions

Subparagraph 2.b(5)(b)—Advance Payments

One recipient pointed out that prohibiting a recipient from using local share funds for advance payments without first obtaining FTA's consent is unfair, particularly if no Federal assistance is at risk. We agree, and have modified the paragraph to remove the prohibition for projects having automatic preaward authority or projects having some form of preaward authority.

Another recipient asked for more examples of allowable pre-award expenditures. We agree, and have identified additional examples in the final circular, noting that the examples given are not all-inclusive.

Paragraph 2.b(6)—Protections Against Performance Difficulties

Subparagraph 2.b(6)(a)—Changes

One commenter emphasized the need for changes clauses. We have strengthened our recommendations that recipients include changes clauses in their contracts. We recognize, however, that a recipient may only be able to include a contract provision requiring the contractor to consider a change rather than demand a change. Every recipient may not have the economic leverage to compel a third party contractor to continue contract work until it is assured payment and other terms under which it must work. We do expect the recipient to include changes and changed conditions clauses that provide for both parties to negotiate in good faith about desirable changes.

Subparagraph 2.b(6)(b)—Remedies

Sub-subparagraph 2.b(6)(b)1—Liquidated Damages

Four commenters requested changes to the liquidated damages provisions in the proposed circular. Two commenters recommended that acceptable methods of calculating liquidated damages, in addition to time, be acknowledged as acceptable. We agree, and the final circular includes additional methods of calculating liquidated damages. Another commenter recommended that we substitute the proposed circular's statement that ''the rate and measurement period may not be excessive,'' with the established standard for liquidated damages ''that the measure of damages must be calculated to reasonably reflect the costs estimated to be incurred by the recipient should the standard not be obtained, and that the procurement file should contain a record of the calculation and rationale.'' We agree, and have made that change. Another commenter asked how we expect a recipient to document the reasonableness of the liquidated damages it intends to use. We have included provisions in the final circular explaining that FTA expects the recipient to calculate a rate and measurement standard that reasonably reflects the costs should the standard not be met, and expects the recipient to include this information in its solicitation and contract. We have also added a discussion in Chapter VII of how liquidated damages might, in certain situations, foster settlements.

Subsection 2.c—Socio-Economic Requirements for the Acquisition of Property and Services

Paragraph 2.c(1)—Labor

Subparagraph 2.c(1)(a)—Wage and Hour Requirements

Two commenters pointed out that the threshold for the wage and hour requirements of the Contract Work Hours and Safety Standards Act has been amended to apply to contracts of $100,000 or more. We agree, and the final circular includes that change.

Subparagraph 2.c(1)(b)—Fair Labor Standards

Consistent with the FTA Master Agreement, we added a reminder that the Fair Labor Standards Act protects employees engaged in commerce.

Paragraph 2.c(2)—Civil Rights

Subparagraph 2.c(2)(c)—Environmental Justice

We added a subparagraph reminding the recipient of Federal Environmental Justice provisions.

Subparagraph 2.c(2)(d)—Limited English Proficiency (LEP)

We added a subparagraph reminding the recipient of Federal Limited English Proficiency provisions.

Subparagraph 2.c(2)(e)—Nondiscrimination on the Basis of Disability

Sub-subparagraph 2.c(2)(e)3—DOT Public Transportation Regulations Implementing Section 504 and the ADA

We consolidated references to the major Federal regulations that describe the various requirements for public transportation services to individuals with disabilities, and provided some examples of their application.

Subparagraph 2.c(2)(f)—Electronic Reports and Information

One commenter asked us to clarify whether the requirement to use accessible electronic formats when delivering reports would apply only to third party contracts for delivery of reports, or also to other information in electronic format that the recipient intends to provide to FTA. We have revised the paragraph on electronic reports and information to clarify that all information submitted to FTA must be provided in accessible formats.

Paragraph 2.c(3)—Environmental Requirements

Subparagraph 2.c(3)(f)—Recycled Products

One commenter asked FTA to post on its Web site a link to EPA's Web site about recovered materials advisory notices. We have included the EPA Web site in the final circular.

Paragraph 2.c(5)—Preference for U.S. Property—Buy America

One commenter pointed out that the proposed circular's description of FTA's Buy America requirements omitted discussion of the $100,000 threshold. We agree, and have included this information in the final circular. We have also revised the Buy America provisions for the final circular to clarify that FTA's Buy America requirements apply to property delivered to the recipient, but not to property acquired by a contractor for use in performing contract work if the property used is not delivered to the recipient.

Subsection 2.d—Technical Restrictions on the Acquisition of Property and Services

Paragraph 2.d(3)—Use of $1 Coins

One commenter objected to the Presidential $1 Coin Act of 2006 requirement that each FTA-assisted public transportation service property that uses coins or currency to be fully capable of accepting and dispensing $1 coins because it is likely to cause an undue hardship on rural public transportation agencies because they will need to either retrofit existing equipment, including farebox and ticket dispensing equipment, or purchase new equipment. The Department of Treasury is implementing those requirements, and FTA lacks the authority to waive them.

Subsection 2.e—Rolling Stock—Special Requirements

Paragraph 2.e(8)—In-State Dealers

One commenter asked how we will administer the SAFETEA–LU amendment to 49 U.S.C. 5325 providing that bus purchases may not be restricted to in-State dealers. The commenter's concern is focused on the conflict that would arise if State law limits purchases of motor vehicles to in-state dealers, while 49 U.S.C. 5325(i) prohibits the limitation. The commenter points out that recipients must comply with Federal law as well as State law. We agree that Federal laws that appear to conflict with similar State laws can cause problems to FTA's recipients. However, 49 U.S.C. 5325(i) preempts conflicting in-state dealer requirements contained in State laws.

Paragraph 2.e(10)—Five-Year Limitation

One commenter asked how FTA plans to enforce the five-year limitation on rolling stock contracts, and whether FTA will require the recipient to prepare a five-year needs document for its contract files. Our response is that FTA has considerable discretion to take actions to determine and enforce compliance with the statutory requirements in its enabling legislation. We believe it useful for the recipient to have documentation in its files that can justify any actions that might call into question the recipient's compliance with statutory requirements of any type, including compliance with the five-year limitation on rolling stock contracts.

Subsection 2.f—Public Transportation Services—Special Requirements

Paragraph 2.f(1)—Protections for Public Transportation Employees

Consistent with the FTA Master Agreement, we added a reminder that the Fair Labor Standards Act protects employees engaged in commerce.

Subsection 2.g—Architectural Engineering and Related Services—Special Requirements

We received three comments about procurements of architectural, engineering, and related services as specified in 49 U.S.C. 5325(b)(1).

Paragraph 2.g(2)—Relation to Construction

Two commenters pointed out inconsistencies between Chapter IV and Chapter VI of the proposed circular in determining when qualifications-based procurement procedures must be used and may not be used. We have re-drafted provisions of both chapters to stress that qualifications-based procurement procedures may be used only when the services are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

Subparagraph 2.g(2)(c)—Type of Contractor Not Determinative

One commenter also suggested that we state that certain architectural engineering firms have the capability of performing services beyond traditional A&E services. We have amended both chapters for consistency, so that the final circular emphasizes that it is the nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, that determines whether qualifications-based procurement procedures must be used or whether qualifications-based procurement procedures may not be used.

Another commenter asked how these qualifications-based procurement requirements would apply to various activities undertaken in an Intelligent Transportation System (ITS) project involving construction or improvements to real property. The final circular now contains a list of some of the activities likely to take place during the implementation and development of an ITS project, and have identified those in which qualifications-based procurement procedures must be used and those in which qualifications-based procurement procedures may not be used.

Subsection 2.h—Construction—Special Requirements

Paragraph 2.h(1)—Bonding

Subparagraphs 2.h(1)(f)—Excessive Bonding

Three commenters questioned whether FTA would accept State bonding policies that differ from Federal requirements. We have amended the proposed circular to affirm that we will not challenge State or local bonding policies that exceed FTA's requirements. One commenter requested that we address the use of bonding for acquisitions beyond construction, commenting on its expense and usefulness. We have amended the proposed circular to explain that while bonding is expensive, bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is to prevent potential risks associated with contractor bankruptcy or financial failure at the time of partially completed work. Another commenter urged us not to encourage recipients to submit each bonding request that exceeds the limits described in the proposed circular to FTA for approval. We agree, and the final circular now reminds the recipient that it may contact the Regional Administrator for the region administering the project for approval of its bonding policies if it chooses to do so. If a recipient's bonding policies far exceed FTA or State or local requirements to an extent that competition is reduced, FTA cannot assure the availability of FTA assistance to support the costs of that acquisition.

Paragraph 2.h(3)—Value Engineering

One commenter cautioned us about our statement that ''FTA will not approve a New Starts grant application

for final design funding or a full funding grant agreement until value engineering is complete.'' While that sentence is based on the requirements of 49 U.S.C 5309, we agree that restrictions pertaining to New Starts projects should not be included in the final circular in a way that might become invalid due to later changes in law. Therefore, we have softened the statement to caution that value engineering can be required as a pre-requisite for some FTA assistance awards.

Another commenter asked that we include a definition of ''value engineering'' that distinguishes it from cost-cutting. We agree, and have added a definition to Chapter I, section 5 that will be used consistently in our revised circulars.

Paragraph 2.h(5)—Prevailing Wages

Two commenters expressed their belief that, along with raising the threshold of the Contract Work Hours and Safety Standards Act to $100,000, the threshold of the Davis-Bacon Act requiring prevailing wages to be paid for construction labor had also been raised to $100,000. FTA disagrees. The Davis-Bacon Act has not been so amended. The Davis-Bacon Act applies its prevailing wage requirements to ''every contract in excess of $2,000 . . . .'' 40 U.S.C. 3142.

Paragraph 2.h(9)—Preference for U.S. Property—Buy America

Three commenters objected to FTA's Buy America provisions for construction projects as overbroad. We agree, and the final circular now includes information about the $100,000 threshold. The final circular also clarifies FTA's position that its Buy America requirements apply to property delivered to the recipient, but not to property acquired by a contractor for use in performing contract work if that property the recipient used is not delivered to the recipient under their contract.

Subsection 2.i—Research, Development, Demonstration, Deployment, and Special Studies—Special Requirements

Paragraph 2.i(1)—Patent Rights

One commenter asked whether FTA will grant a waiver of patent rights when the recipient wants the source code being created to be an open source so that others will be encouraged to use that source code; or when the recipient wants to contract with an entity that has already created an open source code to tailor that code and allow the tailored code also to become open source. At the outset, FTA cannot waive another party's patent rights. While Federal law does not generally authorize a Federal agency to require inventors to make their federally assisted inventions available to the public at large, FTA can and does support projects in which participants agree to make rights to use an invention developed or reduced to practice under an FTA project broadly available.

Paragraph 2.i(2)—Rights in Data

One commenter took exception to FTA's rights in data policy as being inconsistent with the Common Grant Rules. For data developed under a research, development, demonstration, or special studies project, FTA's general policy is to obtain sufficient rights to permit FTA to make either FTA's license in the copyright to the subject data or a copy of the subject data to which it would be entitled under the Common Grant Rules available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor,. FTA obtains these rights in data through the recipient's agreement set forth in the FTA Master Agreement. If FTA is not able to secure sufficient rights in data derived from the research projects it supports and is unable to make that data available for the general benefit of transportation, then certain research and development projects might not be worth pursuing.

The commenter then requested an explanation of those contracts excepted from these requirements. FTA does not seek these broad rights in data for other than research, development, demonstration, or special studies projects. For example, FTA does not seek greater rights in data supplied under its capital projects than those rights provided in the Common Grants Rules, because FTA is not providing Federal assistance for the research and development of property or services at the time the property or services are eligible for capital funding. Due to questions that arose in connection with licensing automatic data processing equipment or programs for the recipient's use, if FTA capital assistance is used to support those costs, then FTA would not take the greater rights. In summary, FTA does not seek greater rights in data used in projects for which FTA did not directly finance the research and development costs of that data.

Paragraph 2.i(3)—Export Control

One commenter requested that we provide a citation to the Export Control regulations referenced in the proposed circular. We agree, and have added the requested citation to the final circular.

Subsection 2.j—Audit Services

Three commenters asked for more information about obtaining audit information from other Federal agencies. We have included information about Federal agencies that work with various types of recipients and contractors to establish indirect cost rates consistent with FAR cost principles. It is our understanding that those Federal agencies are charged with those responsibilities and are expected to fulfill them. While a Federal agency might not perform all audits for recipients of Federal assistance, the Federal agency charged with the responsibility for establishing indirect cost rates and other similar functions would be expected to provide the recipient sufficient data that the recipient's private or internal auditors could perform their duties properly. When we revise our BPPM, we will include more information.

E. Chapter V—Sources

Section 1—Force Account

Four commenters questioned our inclusion of force account as a source from which a recipient could obtain services. Three commenters asserted that the use of force account is a grants management issue, not a procurement issue. Understanding our decision to discuss force account in contrast with third party contracting, one commenter recommended that we clarify that the final circular does not apply to force account work. We agree, and the final circular states that its procurement guidance does not apply to a recipient's force account work.

Section 3—Joint Procurements, and

Section 4—State or Local Government Purchasing Schedules or Purchasing Contracts

Several commenters informed us that the proposed circular's descriptions of joint procurements and procurements through State or local government purchasing schedules or contracts is confusing, and recommended that we reinstate the provisions of FTA Circular 4220.1E. Two commenters, for example, pointed out that joint procurements are unlikely to be undertaken using State or local government purchasing schedules. We agree, and we have revised the sections on Joint Procurement as well as the section on State or Local Government Purchasing Schedules or Purchasing Contracts for clarity.

Section 3—Joint Procurements

The final circular defines ''joint procurement'' to mean a method of contracting in which two or more

purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of a property or services in a fixed quantity, even if expressed as a total minimum and total maximum. The final circular emphasizes that the contract resulting from a joint procurement is not drafted with the understanding that its terms will be made available to purchasers other than the original parties at a later date. As with all FTA assisted contracts, the recipient must comply with all applicable Federal requirements.

One commenter asked whether a ''Cooperative Purchasing Program'' is the same as a joint procurement. We used the term ''Cooperative Purchasing Program'' to refer to the GSA Cooperative Purchasing Program for the Federal Government. The final circular now identifies that program as the ''GSA's Cooperative Purchasing Program'' to preclude confusion with joint procurements.

Subsection 3.a—Use Encouraged

One commenter suggested that discussing the advantages of joint procurement as being able to ''exactly match'' each participating recipient's requirements is misleading, and informs us that in many cases customizing would be required. We agree, and we removed the term ''exactly match.''

Section 4—State or Local Government Purchasing Schedules or Purchasing Contracts

In this section, we have established a definition of ''state or local government purchasing schedule'' to mean an arrangement that a State or local government has established with multiple vendors in which those vendors agree to provide essentially an option to the State or local government to acquire specific property or services in the future at established prices. If the State or local government wishes to permit others to use the schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether it wishes to do so. This arrangement has two parts: (1) Establishing the schedule, and (2) acquiring property and services from the schedule. FTA does not provide Federal assistance to a State or local government when it is establishing its schedule. FTA assistance is provided after the schedule is established and a recipient acquires property or services from that schedule.

Subsection 4.a—Use Encouraged

One commenter asked how State or local government schedules or purchasing agreements could be available to other parties. The extent to which a State or local government chooses to make its purchasing agreements or schedules available rests with the State or local government that has established the schedule or purchasing contract.

Subsection 4.b—All FTA and Federal Requirements Apply

Several commenters expressed the view that it would be impossible for a recipient to use State or local government schedules or purchasing agreements if FTA requirements were to apply to those procurements. FTA recognizes that when a State or local government establishes a schedule, it has not contemplated the need to comply with FTA's third party procurement requirements. For example, a State or local government generally does not consider matters such as FTA Buy America standards at the time its schedules are introduced. A recipient that seeks to use FTA assistance to acquire property or services from a State or local government purchasing schedule, however, must comply with applicable FTA requirements. To do so, the recipient is expected to use competition by seeking bids from three or more vendors listed on the schedule, and then determine whether the property or services as offered would comply with Federal requirements. Among other things, the recipient would need to determine whether a product sought from the schedule would qualify as domestic or foreign under our Buy America standards, if the product would be shipped by ocean-going vessel or by air for compliance with Federal cargo preference requirements, if a new bus had been tested and whether preaward and post delivery review could be obtained, whether the property sought had been manufactured in accordance with environmental restrictions, and so forth. FTA is not able to waive Federal requirements beyond what is permissible under law. Only if the property or services listed on a State or local government purchasing schedule complies with FTA's requirements would the recipient be able to use FTA assistance to support the costs of that property or services.

One commenter asked us to describe methods of meeting FTA requirements when acquiring property and services through a State or local government purchasing schedule. While the recipient would not prepare an open market solicitation for the property or services when attempting to use a State or local government purchasing schedule, the recipient might choose to append the relevant Federal requirements to a purchase order and obtain the vendor's consent to those conditions as a prerequisite for using FTA assistance to support the costs of that property or those services. But whatever procedure the parties use, requirements applicable to FTA procurements cannot be waived.

Section 6—Federal Supply Schedules

Subsection 6.d—Competition and Price Reasonableness

One commenter asked whether State and local governments must verify competition was used for the procurement of items listed on GSA schedules before using those schedules. Our response is that there is no need to verify that competition was used for the property and services listed on GSA schedules prior to using the schedules. Vendors listed on GSA schedules should be treated as prospective sources. Therefore, a recipient is generally expected to select at least three vendors from a GSA schedule and seek proposals.

Section 7—Existing Contracts

Subsection 7.a—Permissible Actions

Paragraph 7.a(1)—Exercise of Options

Subparagraph 7.a(1)(c)—Awards Treated as Sole Source Procurements

One commenter requested that we explain what we mean by ''failure to evaluate the option.'' There is no requirement to solicit for options or obtain firm option prices as part of a solicitation. If option prices are obtained, the recipient need not evaluate those option prices in determining the underlying contract award. However, if the recipient does not evaluate options when the contract was awarded, it may not exercise the options at a later date unless it can justify a sole source award.

Two commenters objected to our position that negotiating a lower option price would always result in a sole source award requiring justification. FTA recognizes that it is reasonable to permit the price of an option to be reduced if the lower price can be reasonably determined from the terms of the original contract, or if that price results from actions that can be reliably measured, such as changes in Federal prevailing labor rates, or as authorized under State or local law. One of the commenters also objected to our view

that negotiating a higher option price would always result in a sole source award requiring justification. FTA has not changed its position. If only a higher price is available, then competition would normally be required unless the higher price results from actions that can be reliably measured, such as increases in Federal prevailing labor rates, or as authorized under State or local law.

One commenter objected to our requirement for contracts to include maximum quantities. The commenter believes that requiring maximum quantities could adversely affect the establishment of State or local government purchasing schedules. FTA disagrees. FTA does not finance the establishment of State or local purchasing schedules, so that when State or local governments and their vendors enter into contracts for their purchasing schedules, those contracts are not subject to FTA requirements. It is only when a recipient intends to use FTA assistance to acquire property or services that FTA requirements are imposed. Thus if an FTA recipient seeks to acquire an indefinite amount of property or services through a State or local purchasing schedule, it would need to specify a maximum quantity as well as a minimum quantity.

Paragraph 7.a(2)—Assignment of Contract Rights

Subparagraph 7.a(2)(a)—Acquisition Through Assigned Contract Rights

Three commenters objected to our position that a recipient seeking an assignment of contract rights from another recipient must ensure that the assigning recipient ''has not improperly expanded the quantity of property or services to be delivered under its original contract.'' The purpose of this provision is to express FTA's intention that the recipient seeking the assignment would review the assigning recipient's contract to determine whether the total quantities sought would not exceed the limits of that original contract. We agree that a recipient seeking an assignment of contract rights cannot determine whether or not the assigning recipient specified greater quantities than the assigning recipient needed at the time of its original solicitation. We have revised this guidance to clarify FTA's concerns.

Subsection 7.b—Impermissible Actions

Paragraph 7.b(2)—Cardinal Changes

One commenter asked us to provide more guidance about cardinal changes and not use the terms ''in-scope'' and ''out-of-scope'' as determinative of contract changes. The commenter warned that if the contract provisions are read without consideration of their context, minor changes not expressly addressed or even contemplated under the contract when it was signed might be considered out-of-scope changes. Minor changes, even if considered ''out-of-scope'' because they are not addressed in the contract, should not be considered ''cardinal'' changes. The commenter recommended that a cardinal change be described as ''a major deviation from the original purpose of the work or the intended method of achievement,'' rather than an ''out-of-scope change.'' Although the Federal Court of Claims coined the term ''cardinal change'' to describe changes that are beyond the scope of the contract, we agree that some changes necessary to fulfill the original intent of the contract might not be expressly included in the contract. Therefore, we have adopted the commenter's recommendation, and the final circular contains revised provisions.

One commenter wanted many more examples and much more guidance. Such guidance can be found in FTA's BPPM at the FTA Web site: *http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html* and ''Frequently Asked Questions'' at the FTA Web site: *http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6039.html*.

Two commenters objected to the example of an engine change or similar large component change as a cardinal change per se, particularly since it might be necessary to obtain a compatible new engine if the old engine is no longer available. FTA's view is that if a major component of a vehicle is no longer available, the recipient should use competition to obtain a compatible substitute. In some cases, the recipient would need to enter into a contract with the original manufacturer if installation of the needed component would be complicated, but in other cases, similar components available from more vendors might be usable and available. If the vehicle has not been fabricated when a specific major component became obsolete, whether using a different component would cause a cardinal change would depend on the extent of the effect of that change. The final circular, however, states that the circumstances surrounding the need for changing major components will determine whether or not a change would be a cardinal change.

F. Chapter VI—Procedural Guidance for Open Market Procurements

We have also restructured Chapter VI so that the final circular consolidates provisions pertaining to the various procurement methods. Chapter VI of the final circular includes additional paragraphs to respond to unanticipated comments on the proposed circular. As a result, we have transferred some of the guidance originally included in other chapters of the proposed circular to Chapter VI of the final circular. Much of this chapter retains provisions substantially similar to their counterpart provisions in FTA Circular 4220.1E or its footnotes, with important exceptions discussed below.

Section 1—Competition Required

Subsection 1.b—Unsolicited Proposals

Two commenters pointed out that the unsolicited proposal provisions of the proposed circular are too broad. FTA agrees that the proposed circular's guidance could be misunderstood. The final circular now permits a recipient to use the same standards applicable to a Federal agency that must comply with the FAR.

Section 2—Solicitation Requirements and Restrictions

Subsection 2.a—Description of Property or Services

Paragraph 2.a(1)—What To Include

Four commenters objected to our admonition that ''Detailed technical specifications should be avoided if at all possible in favor of performance specifications.'' Two commenters pointed out that prohibiting detailed technical specifications could make fleet management more difficult, while one commenter informed us that the prohibition would conflict with design-bid-build construction contracting procedures. We agree in part, and have revised the discussion of detailed technical specifications so that the final circular only expresses a preference for performance or functional specifications, coupled with a statement explaining that there is no flat prohibition against detailed technical specifications when appropriate. The final circular also includes a statement referencing Common Grant Rules requirements.

Paragraph 2.a(2)—Quantities Limited to the Recipient's Actual Needs

One commenter recommended that a discussion of the recipient's needs be placed in a different circular or policy document. We disagree. It is important to remind recipients that they should

not contract for excess quantities, particularly because doing so can increase costs and provide more opportunities for them to assign their contract rights to others, a practice FTA does not favor.

Paragraph 2.a(4)—Prohibitions

Subparagraph 2.a(4)(d)—Retainer Contracts

Two commenters objected to our prohibition against a recipient making noncompetitive awards to any person or firm on a retainer contract without providing further justification. The commenters reminded us that many recipients award retainer contracts based on competition. They expressed their view that this prohibition would unduly limit the recipient's flexibility to acquire the property and services it needs. We agree in part, and the final circular now prohibits only noncompetitive awards to persons or firms on retainer contracts if those awards are not for the property or services specified for delivery under the retainer contracts.

Subparagraph 2.a(4)(e)—Excessive Bonding

One commenter requested more discussion of bonding. The final circular now explains more fully our objections to unnecessary bonding as unduly restrictive of competition.

Subparagraph 2.a(4)(f)—Brand Name Only

Two commenters requested us to state that specifying a brand name product without stating salient characteristics that would allow for an equivalent may be acceptable as a proper sole source award. We have not adopted that recommendation, as we believe it would encourage specifications based on brand names without descriptions of salient characteristics. The final circular, however, includes a modified discussion of ''brand name only'' matters indicating that prohibitions against the use of ''brand name only descriptions'' would apply in some situations.

Subparagraph 2.a(4)(g)—In-State or Local Geographic Restrictions

Sub-subparagraph 2.a(4)(g)3—Major Disaster or Emergency Relief

One commenter recommended that we revise our discussion of exceptions to in-state or geographical preferences for major disaster or emergency relief projects, making special reference to the Stafford Act's preference for organizations, firms, and individuals residing or doing business primarily in the affected area. We agree, and the final circular includes this change.

Subparagraph 2.a(4)(h)—Organizational Conflicts of Interest

One commenter recommended that the organizational conflict of interest subparagraph be revised for clarity. We agree, and have made that revision.

Sub-subparagraph 2.a(4)(h)2—Remedies

Three commenters objected to the proposed circular's provisions that appeared to exempt consortia from organizational conflict of interest restrictions. When drafting those provisions, we were attempting to distinguish arrangements in which a contract would be awarded for both initial and follow-on work from arrangements in which a contract would be awarded for only the initial work. The final circular contains revised provisions stressing that FTA expects the recipient to analyze each planned acquisition for potential organizational conflicts of interest as early in the acquisition process as possible, and to take appropriate measures to avoid, neutralize, or mitigate them before contract award.

Subparagraph 2.a(4)(i)—Restraint of Trade

One commenter asked why noncompetitive pricing is included within the same category as matters within the recipient's control. Both Common Grant Rules provide that noncompetitive pricing practices between firms or between affiliated companies are practices that in some situations can be restrictive of competition. Consequently, the recipient should be alert to situations evidencing the possibility that bidders or offerors seeking contracts might be engaging in noncompetitive pricing practices. Questionable practices would include submissions of identical bid prices for the same products by the same group of firms. Other questionable practices would be reflected in an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

Subsection 2.c—Contract Type Specified

Paragraph 2.c(1)—Typical Contract Types

Subparagraph 2.c(1)(a)—Firm Fixed Price

One commenter recommended that we include a discussion of firm fixed price contracts with economic price adjustments. We agree, and revised the final circular to state that a firm fixed price contract may include an economic price adjustment provision, incentives, or both.

Section 3—Methods of Procurement

Subsection 3.a—Micro-Purchases

We received three comments about micro-purchases. Two commenters advised us that the discussion in the proposed circular was too detailed, and specifically recommended that documentation procedures be moved to the BPPM. We believe a reasonably comprehensive discussion of micro-purchases is necessary in view of the opportunities for misunderstanding.

One commenter recommended that we remove discussions of dollar limits in connection with micro-purchases, mainly because States or local jurisdictions may have lower limits. We disagree. Although we stated in the proposed circular that the recipient could establish lower thresholds for micro-purchases, the final circular emphasizes that the recipient may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.

The same commenter asked how Davis-Bacon requirements relate to the dollar value of a procurement unless it is FTA's position that contracts subject to Davis-Bacon cannot be procured as micro-purchases. In its discussion of micro-purchases, the proposed and final circulars are cautioning the recipient that even though it may use micro-purchase procedures for procurements of construction, it still must comply with Davis-Bacon prevailing wage requirements.

One commenter asked whether the Service Contract Act's threshold of $2,500 should be mentioned in connection with micro-purchases. We have not discussed the Service Contract Act because the only FTA recipient that must comply with the Service Contract Act is the District of Columbia.

Subsection 3.c—Sealed Bids (Formal Advertising)

Paragraph 3.c(1)—When Appropriate

One commenter pointed out that our discussion of sealed bidding gives the impression that sealed bidding can only be used for acquisition of property and construction. We agree that sealed bidding can be used for the acquisition of other types of property and services, and the final circular now clarifies that matter.

Subparagraph 3.c(1)(d)—Price Determinative

One commenter recommended that we clarify the term ''price-related factors'' in our discussion of contract price in the context of sealed bidding procurements. We agree, and revised the final circular to identify transportation costs, life cycle costs, and discounts expected to be taken as examples of price-related factors.

Subparagraph 3.c(1)(e)—Discussions Unnecessary

The same commenter recommended that we clarify this subparagraph to distinguish between when discussions are acceptable, such as before receipt of bids, in negotiations after receipt of bids, and in pre-award responsibility determinations, and when discussions are not acceptable, such as after receipt of bids. We agree, and made appropriate changes.

Subsection 3.d—Competitive Proposals (Request for Proposals)

The same commenter also recommended that we change the wording of the standard for using competitive proposals to ''there is an expectation that there is more than one source willing and able to submit an offer, or proposal.'' We agree, and the final circular contains appropriate changes.

Two commenters requested that we clarify that only one of the four pre-conditions justifying the use of competitive proposals need be present. We agree, and the made that revision.

Paragraph 3.d(1)—When Appropriate

Subparagraph 3.d(1)(a)—Type of Specifications

One commenter recommended that we support the use of negotiations when performance specifications are used. Two commenters recommended that we delete ''unavailability of adequate specifications or descriptions'' as a standard justifying use of competitive proposals. We have adopted those recommendations, and the final circular now include a statement that detailed technical specifications may be used if other circumstances, such as the need for discussions or factors other than price alone should determine contract award.

Subparagraph 3.d(1)(b)—Uncertain Number of Sources

The same commenter expressed the view that uncertainty about whether more than one offeror will submit a proposal is not in itself a reason to require the use of competitive proposals if State and local laws permit the recipient to negotiate if it only receives a single bid in response to a formally advertised procurement. The commenter then recommended that we delete the standard or explain it more fully. We agree, and have explained the standard more fully.

Subparagraph 3.d(1)(c)—Price Alone Not Determinative

One commenter asked us to clarify the distinction between price-related factors in sealed bidding and award criteria for competitive proposals. We agree, and made the necessary revision.

Subparagraph 3.d(1)(d)—Discussions Expected

The same commenter asked us to make the distinction between discussions permitted in sealed bidding and the discussion/negotiation process in competitive proposals. We agree, and made the revision.

Paragraph 3.d(2)—Procurement Procedures

Subparagraph 3.d(2)(f)—Best Value

That commenter also requested us to amend the discussion of ''Best Value'' to stress that the evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. We agree, and made the revision.

Subsection 3.e—Two-Step Procurement Procedures

One commenter recommended that competitive negotiation be included in the discussion of two-step procurement processes. We agree, and added guidance about proposals as well as bids in our general discussion of two-step procurement procedures.

Subsection 3.f—Architectural Engineering Services and Other Services

Again as in Chapter IV, the same commenter suggested that we state that certain architectural engineering firms have the capability of performing services beyond traditional A&E services. We have revised both Chapter VI and Chapter IV of the final circular for consistency, emphasizing that the nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures must be used or may not be used.

Paragraph 3.f(1)—Qualifications-Based Procurement Procedures Required

One commenter reminded us to resolve the inconsistencies between Chapter IV and Chapter VI of the proposed circular in designating the relationship to real property compared with the relationship to construction as the standard for determining when qualifications-based procurement procedures must be used and may not be used. We have revised both Chapter VI and Chapter IV of the final circular to stress that qualifications-based procurement procedures may be used only when the services are directly in support of, directly connected to, directly related to, or will lead to construction, alteration, or repair of real property.

Another commenter requested us to provide examples of activities related to a project involving ''improvements to real property'' that would require the use of qualifications-based procurement procedures. The final circular includes several examples.

Paragraph 3.f(2)—Qualifications-Based Procurement Procedures Prohibited

The same commenter also requested us to provide examples of ''improvements to real property'' for which qualifications-based procurement procedures would be prohibited. We agree, and have added several examples.

Paragraph 3.f(5)—Audits and Indirect Costs

Subparagraph 3.f(5)(d)—Prenotification: Confidentiality of Data

Two commenters asked us to clarify the confidentiality requirements for cost or rate data used to determine indirect cost rates for architectural engineering contracts, particularly in light of the fact that States have widely differing ''Open Records'' type laws. FTA recognizes that some State laws might make it difficult for a recipient to protect cost and rate data pertaining to its contractors. Nevertheless, FTA's enabling legislation at 49 U.S.C. 5325(b)(3)(D) requires a recipient to treat any cost or rate data used to determine indirect cost rates for architectural engineering contracts as confidential. Section 5325(b)(3)(D) also prohibits the recipient from making that data accessible or providing it to another party unless the audited firm provides the recipient written permission to do so. Moreover, if prohibited by law, that cost and rate data may not be disclosed under any circumstances. FTA is not authorized to waive the requirements of 49 U.S.C. 5325(b)(3)(D). Therefore, the final circular recommends that before requesting or using cost or rate data, not only should a recipient notify the affected firm, but it also must obtain permission to provide that data in

response to a valid request under a State's ''Open Records'' type law.

Subsection 3.g—Design-Bid-Build

One commenter asked us to use an outline format for this subsection. We agree, and have revised the format of this subsection for greater consistency with the formats generally used in the final circular.

The same commenter requested us to revise the subsection to emphasize that two contracts are awarded when a recipient uses the design-bid-build procurement method. We agree, and made that revision.

Subsection 3.h—Design-Build

In response to comments about format and clarity, we revised the final circular for greater consistency with the formats generally used in the final circular.

Subsection 3.i—Other Than Full and Open Competition

Paragraph 3.i(1)—When Appropriate.

Subparagraph 3.i(1)(b)—Sole Source

Sub-subparagraph 3.i(1)(b)1—Unique Capability and Availability

One commenter asked us to provide examples of unique capability and availability that justify a sole source procurement, pointing out that many vendors have unique capabilities that do not justify a sole source procurement. We do not believe specific examples would be helpful and might further cause misunderstanding. In describing property or services that have unique capability and availability, we recognize that property or services with unique or innovative concepts, that have patents or restricted data rights, that would require substantial duplication costs, or would require unacceptable delay meet the standard of having unique capability and availability. Our position is that a unique or innovative concept qualifies as a sole source if it is a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted. The property or services must also be available to the recipient only from one source and have not been available in the past to the recipient from another source. We believe situations in which prospective acquisitions are limited by patents or restricted data rights, substantial duplication costs, or requiring unacceptable delay can be readily recognized and need no further explanation.

Sub-subparagraph 3.i(1)(b)2—Single Bid or Proposal

Four commenters pointed out that in our discussion of the consequences of procurements resulting in a single bid or proposal, the proposed circular uses the terms ''adequate'' and ''inadequate'' in ways different from the BPPM's use of those terms. In short, the commenters requested that we adopt the standard that competition is ''adequate'' if a single bid or proposal is submitted through no fault of the recipient. We agree, and made that revision.

Subparagraph 3.i(1)(d)—Associated Capital Maintenance Item Exception Repealed

Two commenters asked why we omitted associated capital maintenance items as appropriate for sole source. When SAFETEA–LU was signed into law on August 10, 2005, it repealed the sole source procurement authority for associated capital maintenance items. Since then, an associated capital maintenance item must qualify under the same standards that would apply to other sole source acquisitions.

Paragraph 3.i(3)—Procurement Procedures

Subparagraph 3.i(3)(b)—Sole Source Justification

One commenter recommended that we require that a sole source justification must be prepared by an entity that can independently evaluate information provided by the recipient and prospective contractor. FTA agrees that independent sole source evaluations would be desirable, but believes it would be unrealistic to impose a firm requirement for independent evaluations. Requirements for independent sole source evaluations are not expressly authorized by our law or the Common Grant Rules, and may conflict with State or local procurement procedures.

Section 5—Incentive Costs and Payments

One commenter asked whether incentive payments are available only to contractors that provide accurate cost and ridership estimates in connection with a new fixed guideway capital project and to contractors that enable a new fixed guideway capital project to be completed for less than its original estimated cost. Another commenter objected to that limitation. We agree that incentive payments should not be limited to the two situations described. The final circular now contains a reference to the ''Incentive Payments'' information in ''Frequently Asked Questions'' at the FTA Web site: *http://www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6148.html.*

Section—6 Cost and Price Analysis

Subsection 6.a—Cost Analysis

One commenter asks whether, as stated in the proposed circular, a cost analysis will be necessary in the case of a single bid or proposal when competition has been determined adequate because submission of only one bid or proposal was not the fault of the recipient, or whether a price analysis would be acceptable. FTA's position is that a cost analysis will be required in the case of a single bid or proposal that is not the fault of the recipient, except if a price analysis can be based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

Paragraph 6.a(2)—Establishing Indirect Cost Rates

One commenter questioned whether the discussion about which entity must approve indirect cost rates applies to architectural engineering contracts. FTA did not intend these provisions to apply to architectural engineering contracts because architectural engineering contracts have their own statutory indirect costs requirements. We have revised this discussion and the final circular now states that the provisions of this paragraph do not apply to architectural engineering contracts.

Subparagraph 6.a(2)(b)—Contracts Exceeding $5 Million

Rather than engage an outside auditor, one commenter has recommended that a recipient be permitted to use its internal audit staff to perform indirect costs when required for contracts exceeding $5 Million. FTA disagrees. The purpose of using an outside entity is to obtain an objective review of the recipient's rates, profits, and other financial data related to a contract that must undergo cost analysis.

Section 7—Evaluations

Subsection 7.c—Evaluators

One commenter objected to the proposed circular's implied requirement that all proposal evaluations must be performed by auditors or financial management personnel, pointing out that for certain procurements, technical or public policy personnel should perform the evaluations. We agree that technical and public policy staff should participate in bid or proposal

evaluations and that a recipient may use auditors and financial management personnel as they see fit, and have made that revision to the final circular. We have also clarified that the recipient may contract for those services its staff are unable to perform.

Subsection 8—Contract Award

Subsection 8.a—Award to Other Than the Lowest Bidder

One commenter recommended that the recipient be advised to state its right to award the contract to other than the low bidder or offeror in its solicitation document. We agree, and the final circular has been revised accordingly.

Subsection 8.c—Rejections of Bids and Proposals

Three commenters recommended that the subparagraph discussing bid rejection should be expanded to apply to both bids and offers or proposals. We agree, and have made the revision requested.

G. Chapter VII—Protests, Changes and Modifications, Disputes, Claims, Litigation, and Settlements

This chapter consolidates FTA guidance pertaining to third party procurement protests with guidance pertaining to disagreements that may emerge during the course of a third party procurement. The chapter now includes discussions of protests, changes and modifications, disputes, claims, litigation, and settlements.

Section 1—Protests

Section 1 addresses FTA and the recipient's responsibilities pertaining to protests of third party contract decisions. These provisions are substantially similar to those in FTA Circular 4220.1E. It adds a new discussion of FTA's practice of reviewing only those protests of an ''interested party,'' which must be an actual or prospective bidder or offeror with a direct economic interest in the third party contract award.

Subsection 1.a—The Recipient's Role and Responsibilities

Paragraph 1.a(2)—Responsibilities to FTA

Subparagraph 1.a(2)(a)—Timely Notification

Three commenters asked who the recipient should notify when it receives a third party contract protest. Our response is that FTA expects the recipient to report any current or prospective third party contract protest involving more than $100,000, and any protests involving controversial or highly publicized matters irrespective of amount in its next quarterly Milestone Progress Report, and at the next Project Management Oversight review, if any. If the recipient issues a protest decision adverse to the protester, FTA expects the recipient to notify the FTA Regional Administrator for the region administering a regional project or the FTA Associate Administrator for the Program Office administering a headquarters project directly, so that FTA can be prepared in case of an appeal. We included that information in the final circular.

Subsection 1.b—FTA's Role and Responsibilities

Paragraph 1.b(1)—Requirements for the Protester

Subparagraph 1.b(1)(a)—Qualify as an ''Interested Party''

One commenter asked whether a subcontractor that has committed to be part of a team that prepared the proposal or bid would be eligible to qualify as an ''interested party'' and file a protest with FTA, or whether only a prime contractor or consultant would qualify as an ''interested party.'' Our response is that a subcontractor does not qualify as an ''interested party'' that may file a protest with FTA because a subcontractor has only an indirect interest in the results of the procurement; moreover, a subcontractor does not submit bids or offers to the recipient. The final circular lists various entities that either qualify or do not qualify as an ''interested party'' that may file a protest with FTA. For example, an established consortium, joint venture, team, or partnership that is an actual bidder or offeror would qualify as an ''interested party'' that has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, team, or partnership, acting solely for itself, however, would not qualify as an ''interested party.'' An association or organization that does not perform contracts also would not qualify as an ''interested party.''

Paragraph 1.b(2)—Extent of FTA Review

In view of FTA's decision to limit its review of third party contract protests to a recipient's failure to have or to follow its protest procedures, a recipient's failure to review a complaint or protest, or allegations of violations of Federal law or regulations, one commenter complained that FTA's requirements for recipients are very detailed and impose additional administrative burdens on the recipient to report each protest to the FTA even if the protest does not involve any of the areas that the FTA would review. We disagree. The Common Grant Rules for governmental recipients require the recipient ''in all instances * * * [to] * * * disclose information regarding the protest to the awarding agency.'' FTA reserves the right to obtain as much information as it needs about each protest, although the amount of information it may request will vary depending on whether FTA is asked to participate in the costs of defending the protest and its resolution. The extent of information FTA may require will also vary depending on whether the protest involves controversial or highly publicized matters. The final circular states that FTA is particularly interested in any protest of an FTA assisted third party contract exceeding $100,000, and any protest of an FTA assisted third party contract involving controversial or highly publicized matters irrespective of the amount.

Section 2—Changes and Modifications

This section consists of guidance on changes and modifications to third party contracts. We revised the guidance in the final circular to accommodate some of the comments discussed below.

One commenter requested an extensive discussion of the procedures for contract changes and modifications. Our response is that more extensive information about changes and modifications can be found in the BPPM.

The same commenter asked that the final circular include references to other parts of the circular pertaining to contract changes. In Chapter I, section 5 of the final circular, we have established definitions for ''cardinal change,'' ''change order,'' and ''constructive change.'' We are not using the term ''constructive change order'' in the final circular. The final circular includes information about changes in Chapter IV, paragraph 2.b(3) in connection with period of performance, in Chapter IV, subparagraph 2.b(6)(a) in connection with protecting against performance difficulties, and Chapter V, paragraph 7.b(2) in connection with assignment of contract rights.

Section 3—Disputes

The final circular changes the location of the section on disputes with the section on claims set forth in the proposed circular, and adds more information in response to comments we received as described below.

Subsection 3.a—The Recipient's Role and Responsibilities

Paragraph 3.a(1)—Notify FTA about Disputes

One commenter asked whom the recipient should notify when it becomes involved in a dispute related to a third party contract. Our response is that FTA expects the recipient to report any current or prospective third party contract dispute involving more than $100,000, and any dispute involving controversial or highly publicized matters irrespective of amount, in its next quarterly Milestone Progress Report, and at the next Project Management Oversight review, if any. The final circular contains that information.

Paragraph 3.a(2)—Adequate Documentation

One commenter argued that requiring the recipient to include all pertinent facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation pertaining to a dispute appears to imply that FTA would question any settlement the recipient arranges unless there is no likelihood of successful litigation. The commenter also added that while some disputes may lead to litigation, many should be settled. We agree in principle that many disputes may best be resolved through settlement. But whether or not FTA seeks access to the recipient's records pertaining to a dispute, FTA expects the recipient to include adequate documentation in its project files of the facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation proceeding as may be necessary to justify FTA's concurrence in the compromise or settlement of the claim, should FTA determine its concurrence would be necessary. Maintaining adequate documentation of a dispute or other significant event will likely benefit the recipient, even if FTA does not inspect those records. The amount of information FTA may request will vary depending upon the nature of the claim. FTA is particularly interested in any current or prospective major dispute exceeding $100,000, and any dispute involving controversial or highly publicized matters irrespective of amount relating to any third party contract. The final circular contains that information.

Paragraph 3.a(3)—Audit

The same commenter expressed concerns about our recommendation that the recipient obtain a project audit, and argued that for FTA to delay participation in settlement costs until an audit has been completed could unnecessarily hamper negotiations and delay closure of the project. Our response is that a recipient should rely on itself to finance its own settlements, with the use of project funds that have been awarded for the contract under the grant or cooperative agreement to the extent that settlement costs are supportable under the Federal cost principles that apply to the recipient. The recipient should not rely on FTA to provide any extra Federal assistance beyond the amount previously awarded to support the settlement.

The same commenter asked why FTA would recommend an audit after the recipient has reached a settlement agreement. We consider an audit to be a tool that the recipient can use to justify that the settlement is necessary, reasonable, adequately documented, and that FTA should participate in its costs.

Section 4—Claims and Litigation

In addition to changing the location of the section on claims with the section on disputes as set forth in the proposed circular, the final circular includes a discussion of litigation and also includes more information in response to comments we received as described below.

Subsection 4.a—The Recipient's Role and Responsibilities

One commenter asked us to clarify whether the Common Grant Rules' assignment of responsibility to the recipient to resolve third party contract claims means that the recipient is expected to resolve claims made under its third party contracts or claims against the contractor made by third parties. FTA's interpretation of the Common Grant Rules is that the recipient is expected to resolve claims made under its third party contracts, but not claims against the contractor made by third parties. We have revised the circular to make that clarification.

Paragraph 4.a(2)—Legal Rights and Remedies

The same commenter complained about the provision in the proposed circular directing the recipient to pursue all legal rights and remedies available under any third party contract, claiming that doing so would preclude settlement of minor disputes until all contract remedies, including termination or litigation, have been exhausted. The commenter pointed out that such an interpretation would have significant adverse effects on the project. We agree in part with the commenter's observations. The final circular has been revised to clarify that, in resolving third party contract claims, FTA expects the recipient to take reasonable measures to pursue its rights and remedies available under law, including settlement, particularly if failure to do so would jeopardize the Federal interest in the project or cause the recipient to seek additional Federal assistance.

The same commenter argued that providing the level of documentation specified in the proposed circular would have the potential of violating attorney/client privilege, and that providing documentation relative to any disputed negotiations is very different from producing procurement files relative to a particular solicitation. While FTA understands that providing information in connection with claims or litigation can be difficult, FTA reserves the right to review the recipient's records and supporting documentation that would justify the use of FTA assistance to support the costs resulting from the claim or litigation. The amount of information FTA may request will vary depending on the nature of the claim or litigation. FTA is particularly interested in any current or prospective major third party contract claim or litigation in amounts exceeding $100,000, and any claim or litigation involving controversial or highly publicized matters irrespective of the amount relating to any third party contract. The final circular contains that information.

Subsection 4.b—FTA's Role and Responsibilities

Paragraph 4.b(1)—Proceeds Recovered

One commenter pointed out that it may not be possible to calculate the amount of proceeds a recipient recovers in proportion to the Federal share committed to the project. The amount of ''any net proceeds'' may not have a direct correlation to a portion of an overall project. Except for unusual circumstances, we disagree. We believe that equitable calculations of the Federal share committed to a project or part of a project may in some instances be difficult, but not impossible. Moreover, the last sentence of 49 U.S.C. 5309(h)(6) requires proportionate refunds of the Federal share when reductions in the net project costs of capital investment projects are made. The Common Grant Rules provide that recipients should expend refunds and rebates for project costs before requesting further payments from the Federal Government, which would have the effect of providing some, if not a

strictly proportionate, refund of Federal assistance to the Federal grantor agency.

Paragraph 4.b(2)—Liquidated Damages

One commenter asked whether in negotiating a settlement, the recipient could exchange its rights to liquidated damages for extra property or services. We agree that in some situations doing so would be reasonable. The final circular includes a new paragraph addressing that matter.

Section 5—FTA Participation in Settlements, Arbitration Awards, and Court Awards

Much of the guidance in this section has been transferred from FTA Circular 5010.1C, ''Grant Management Guidelines,'' 10–01–98 substantially intact, modified to accommodate the comments we received as discussed below.

Subsection 5.a—The Recipient's Responsibilities

Paragraph 5.a(1)—Settlement Arrangements Must Be Reasonable

One commenter asked that FTA discuss settlements in lieu of liquidated damages that substitute additional services or equipment for cash payments, possibly resulting in benefits to all parties. We agree that, in certain situations, substitutions of extra property or services rather than liquidated damages payments could constitute all or part of a reasonable settlement. FTA also recognizes that in certain instances a settlement may require the recipient to relinquish its claims for all or part of the liquidated damages and other amounts the recipient would be owed if it prevailed on all matters at issue. The final circular includes a new paragraph explaining FTA's views on reasonable settlements.

Subparagraph 5.a(3)(c)—Special Federal Interest or Federal Concern

We have amended the heading of this subparagraph to include the term ''Federal Concern,'' which is sometimes used interchangeably with ''Special Federal Interest.'' We believe it is in the best interests of the recipient to obtain FTA review and written concurrence in settlements when a special Federal interest or concern is declared due to program management concerns, possible mismanagement, impropriety, waste, or fraud. One commenter requested that we explain when and how the recipient should be aware that a special Federal interest in a project is ''declared,'' and complained that, as written, the declaration could be an after-the-fact action by FTA. Our response is that if the recipient has entered into a settlement before FTA has declared a special interest in the matter at issue, then the recipient would not be able to obtain FTA's review and concurrence in advance. In such a case, if after the recipient agreed to a settlement and FTA became interested in the project due to allegations of program management concerns, possible mismanagement, impropriety, waste, or fraud, FTA could refuse to participate in the costs of activities associated with those improprieties, and even recover the Federal assistance used to support those improprieties. The purpose of obtaining FTA review and concurrence is to gain assurance that the costs of specific activities, including procurements, will be eligible for FTA assistance.

Subsection 5.b—FTA's Prerogatives

Paragraph 5.b(2)—Provide Federal Assistance

The same commenter expressed concerns that FTA will fund only a portion of eligible costs of contractor's claims. Our response is as follows: To the extent that the recipient has not used all or part of the FTA assistance budgeted for the activity that was the subject of a dispute, claim, or litigation, the recipient may use the funds so budgeted to pay the costs of the settlement or resolution of the matter. Any additional FTA assistance that could be provided would depend on the availability of all or part of the FTA assistance requested. Even if all the requested FTA assistance were available, we cannot assure that FTA will be able to provide a sufficient amount of Federal assistance to pay for the entire Federal share of those costs. Nevertheless, FTA generally attempts, subject to availability of funds, to provide FTA assistance in the percentage that matches the percentage of the original award. However, any expenditure of FTA assistance is also subject to the requirement that the costs claimed be reasonable, allowable, and allocable.

Paragraph 5.b(3)—Deny Federal Assistance

Three commenters objected to the list of situations in which FTA may determine the extent to which FTA assistance could be used for their support. The commenters pointed out that many of the situations listed involving the recipient, the contractor, and other jurisdictions or entities may be a result from judgments entered into in good faith that turned out bad, rather than matters of negligence or incompetence. We agree, and have revised the final circular to clarify FTA's views that the situations described in the paragraph do not always mean that FTA will not provide all or some Federal assistance contemplated, or that FTA will withdraw all or some Federal assistance previously awarded, or that FTA will attempt to recover all or some Federal assistance used in the situation.

The commenter asked that FTA remove its examples of specific circumstances in which FTA might not participate in project costs unless those circumstances are exhaustive. FTA disagrees. Not knowing all the possibilities that can affect a project, we are unable to provide an all-inclusive list of examples that might cause FTA to reduce, withdraw, or seek recovery of all or some Federal assistance. We believe these examples can be useful indications of situations of concern to FTA.

Another commenter implied that failure by FTA or its oversight contractors to note and correct errors the recipient has made should affect FTA's decision to participate in the costs of resolving protests, disputes, claims or litigation in which the recipient otherwise might be found to be at fault. We disagree. FTA pays its ''oversight'' contractors only to perform ''oversight'' and report their findings and recommendations to FTA. Neither FTA nor its oversight contractors act as a recipient's quality control agents nor do they make decisions for recipients. Any perceived failure of FTA or its oversight contractors to note and correct a recipient's error does not indicate FTA's concurrence in the recipient's action, nor does it impose any liability on FTA.

Appendix A—References

One commenter provided recommendations about changes to citations as listed in the Appendix. The final circular includes most of those recommended changes.

Appendix B—FTA Regional and Metropolitan Office Contact Information

The final circular's list of regional and metropolitan office contact information now includes the Philadelphia Metropolitan Office, which was erroneously omitted.

Appendix C—Third Party Contracting Checklists

In response to one commenter's request for review aids and worksheets, the final circular now includes a new Appendix C with checklists including references to specific sections of the final circular.

Appendix D—Federally Required and Other Model Clauses

In response to one commenter's request for clause matrices, the final circular now includes a new Appendix D with matrices identifying the various clauses and contract provisions that might be required.

Index

One commenter asked us to include ''piggybacking'' and ''tag-on'' to the index. We agree, and the final circular includes those terms in this index.

The same commenter asked that topic headings be formatted to stand out more clearly. The final circular includes these changes.

Issued in Washington, DC, this 24th day of September, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–22914 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Literacy will convene its fifth meeting on Tuesday, October 14, 2008, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC beginning at 2 p.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 14, 2008, at 2 p.m. Eastern Time.

ADDRESSES: The President's Advisory Council on Financial Literacy will convene its fifth meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

Submission of Writen Comments: The public is invited to submit written statements with the President's Advisory Council on Financial Literacy by any one of the following methods:

Electronic Statements

E-mail *FinancialLiteracyCouncil@do.treas.gov*; or

Paper Statements

Send paper statements in triplicate to President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1332, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treasury.gov/offices/domestic-finance/financial-institution/fin-education/council/index.shtml*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will make such statements available for public inspection and copying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Edwin Bodensiek, Director of Outreach, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at *ed.bodensiek@do.treas.gov*.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Advisory Council, has ordered publication of this notice that the President's Advisory Council on Financial Literacy will convene its fifth meeting on Tuesday, October 14, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Financial Education at 202–622–1783 or *FinancialLiteracyCouncil@do.treas.gov* by 5 p.m. Eastern Time on Friday, October 10, 2008, to inform the Department of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. To enter the building, attendees should e-mail the Department their full name, date of birth, social security number, organization, and country of citizenship. The purpose of this meeting is for the President's Advisory Council on Financial Literacy to discuss new agenda items, update the President's Advisory Council on Financial Literacy on the work of the committees and follow-up on issues from previous meetings.

Dated: September 24, 2008.

Taiya Smith,

Executive Secretary, Treasury Department.

[FR Doc. E8–22941 Filed 9–29–08; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Ameribank, Northfork, WV; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Ameribank, Northfork, West Virginia (OTS No. 14177).

Dated: September 23, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–22744 Filed 9–29–08; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet October 28–30, 2008 at the Capital Hilton, 16th and K Street, NW., Washington, DC, from 8:30–4:30 p.m., each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On October 28, the agenda will include overviews of the Veterans Health Administration, the Veterans Benefits Administration, the National Cemetery Administration, an update on the 2008 Advisory Committee on Women Veterans Report, and an update on the activities conducted by the

Center for Women Veterans. On October 29, the agenda will include discussion on legislation related to women veterans, women veterans' health, updates to recommendations made in the 2008 Advisory Committee on Women Veterans Report, updates from the Department of Labor, and VA's suicide prevention initiatives. On October 30, the agenda will include updates on rural health, military sexual assault prevention and response programs, and VA's homeless programs. The agenda is tentative and is subject to change.

Any member of the public wishing to attend should contact Ms. Shannon L. Middleton, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Middleton may be contacted either by phone at (202) 461–6193, fax at (202) 273–7092, or e-mail at *00W@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: September 24, 2008.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. E8–22910 Filed 9–29–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,

September 30, 2008

Part II

Department of Homeland Security

6 CFR Part 5

Privacy Act of 1974: Implementation of Exemptions; System of Records; Final Rules and Notice

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0090]

Privacy Act of 1974: Implementation of Exemptions; Privacy Act; Office of Intelligence and Analysis Enterprise Records System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new system of records entitled the ''Office of Intelligence and Analysis (I&A) Enterprise Records System (ERS)'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ERS system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective September 30, 2008.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact the Information Sharing and Knowledge Management Division, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528. For privacy issues, please contact: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 28060, May 15, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the Office of Intelligence and Analysis Enterprise Records System (ERS). The ERS system of records notice was published concurrently in the **Federal Register**, 73 FR 28128, May 15, 2008, and comments were invited on both the proposed rule and SORN. No comments were received.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

Public Comments

I&A received no comments on the system of records notice and notice of proposed rulemaking. I&A will implement the rulemaking as proposed.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action 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, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph 7 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

7. The Office of Intelligence and Analysis (I&A) Enterprise Records System (ERS) consists of records including intelligence information and other properly acquired information received from agencies and

components of the federal government, foreign governments, organizations or entities, international organizations, state and local government agencies (including law enforcement agencies), and private sector entities, as well as information provided by individuals, regardless of the medium used to submit the information or the agency to which it was submitted. This system also contains: Information regarding persons on watch lists with known or suspected links to terrorism; the results of intelligence analysis and reporting; ongoing law enforcement investigative information, information systems security analysis and reporting; active immigration, customs, border and transportation, security related records; historical law enforcement, operational, immigration, customs, border and transportation security, and other administrative records; relevant and appropriately acquired financial information; and public-source data such as that contained in media reports and commercially available databases, as appropriate. Data about the providers of information, including the means of transmission of the data, is also retained.

(a) Pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), (4), and (5), (e)(1), (e)(4)(G), (H), and (I), and (f). These exemptions apply only to the extent that information in this system is subject to exemption. Where compliance would not appear to interfere with or adversely affect the intelligence, counterterrorism, homeland security, and related law enforcement purposes of this system, the applicable exemption may be waived by DHS.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any interest in the individual of an intelligence, counterterrorism, homeland security, or related investigative nature. Revealing this information could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities of:

(i) Known or suspected terrorists and terrorist groups;

(ii) Groups or individuals known or believed to be assisting or associated with known or suspected terrorists or terrorist groups;

(iii) Individuals known, believed to be, or suspected of being engaged in activities constituting a threat to homeland security, including (1) activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that either cross our borders or are otherwise in violation of the immigration or customs laws and regulations of the United States; (2) activities which could reasonably be expected to assist in the development or use of a weapon of mass effect; (3) activities meant to identify, create, or exploit the vulnerabilities of, or undermine, the ''key resources'' (as defined in section 2(9) of the Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States, including the cyber and national telecommunications infrastructure and the availability of a viable national security and emergency preparedness communications infrastructure; (4) activities detrimental to the security of transportation and transportation systems; (5) activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure; (6) activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code; (7) activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States; (8) activities which impact, concern, or otherwise threaten domestic maritime safety and security, maritime mobility and navigation, or the integrity of the domestic maritime environment; (9) activities which impact, concern, or otherwise threaten the national operational capability of the Department to respond to natural and manmade major disasters and emergencies, including acts of terrorism; (10) activities involving the importation, possession, storage, development, or transportation of nuclear or radiological material without authorization or for use against the United States;

(iv) Foreign governments, organizations, or persons (foreign powers); and

(v) Individuals engaging in intelligence activities on behalf of a foreign power or terrorist group.

Thus, by notifying the record subject that he/she is the focus of such efforts or interest on the part of DHS, or other agencies with whom DHS is cooperating and to whom the disclosures were made, this information could permit the record subject to take measures to impede or evade such efforts, including the taking of steps to deceive DHS personnel and deny them the ability to adequately assess relevant information and activities, and could inappropriately disclose to the record subject the sensitive methods and/or confidential sources used to acquire the relevant information against him/her. Moreover, where the record subject is the actual target of a law enforcement investigation, this information could permit him/her to take measures to impede the investigation, for example, by destroying evidence, intimidating potential witnesses, or avoiding detection or apprehension.

(2) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual rights of access to and amendment of records (including the review of agency denials of either) contained in this system, which consists of intelligence, counterterrorism, homeland security, and related investigatory records concerning efforts of the Department, as described more fully in subsection (b)(1), above. Compliance with these provisions could inform or alert the subject of an intelligence, counterterrorism, homeland security, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating, of the fact and nature of such efforts, and/or the relevant intelligence, counterterrorism, homeland security, or investigatory interest of DHS and/or other intelligence, counterterrorism, or law enforcement agencies. Moreover, compliance could also compromise sensitive information either classified in the interest of national security, or which otherwise requires, as appropriate, safeguarding and protection from unauthorized disclosure; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, including interfering with intelligence or law enforcement investigative processes by permitting the destruction of evidence, improper influencing or intimidation of witnesses, fabrication of statements or testimony, and flight from detection or apprehension; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, and potential witnesses. Amendment of the records would interfere with ongoing intelligence, counterterrorism, homeland security, and law enforcement investigations and activities, including incident reporting and analysis activities, and impose an impossible administrative burden by requiring investigations, reports, and analyses to be continuously reinvestigated and revised.

(3) From subsection (e)(1) (Relevant and Necessary) because it is not always possible for DHS to know in advance of its receipt the relevance and necessity of each piece of information it acquires in the course of an intelligence, counterterrorism, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating. In the context of the authorized intelligence, counterterrorism, and investigatory activities undertaken by DHS personnel, relevance and necessity are questions of analytic judgment and timing, such that what may appear relevant and necessary when acquired ultimately may be deemed unnecessary upon further analysis and evaluation. Similarly, in some situations, it is only after acquired information is collated, analyzed, and evaluated in light of other available evidence and information that its relevance and necessity can be established or made clear. Constraining the initial acquisition of information included within the ERS in accordance with the relevant and necessary requirement of subsection (e)(1) could discourage the appropriate receipt of

and access to information which DHS and I&A are otherwise authorized to receive and possess under law, and thereby impede efforts to detect, deter, prevent, disrupt, or apprehend terrorists or terrorist groups, and/or respond to terrorist or other activities which threaten homeland security. Notwithstanding this claimed exemption, which would permit the acquisition and temporary maintenance of records whose relevance to the purpose of the ERS may be less than fully clear, DHS will only disclose such records after determining whether such disclosures are themselves consistent with the published ERS routine uses. Moreover, it should be noted that, as concerns the receipt by I&A, for intelligence purposes, of information in any record which identifies a U.S. Person, as defined in Executive Order 12333, as amended, such receipt, and any subsequent use or dissemination of that identifying information, is undertaken consistent with the procedures established and adhered to by I&A pursuant to that Executive Order. Specifically, I&A intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from ERS, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of I&A's functions, and otherwise falls into one of a limited number of authorized categories, each of which reflects discrete activities for which information on individuals would be utilized by the Department in the overall execution of its statutory mission.

(4) From subsections (e)(4) (G), (H) and (I) (Access), and (f) (Agency Rules), inasmuch as it is unnecessary for the publication of rules and procedures contemplated therein since the ERS, pursuant to subsections (1) and (2), above, will be exempt from the underlying duties to provide to individuals notification about, access to, and the ability to amend or correct the information pertaining to them in, this system of records. Furthermore, to the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the information accompanying the system notice for ERS, as published in today's **Federal Register**, exemption from it is also necessary to protect the confidentiality, privacy, and physical safety of sources of information, as well as the methods for acquiring it. Finally, greater specificity concerning the description of categories of sources of properly classified records could also compromise or otherwise cause damage to the national or homeland security.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22603 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0080]

Privacy Act of 1974: Implementation of Exemptions; Maritime Awareness Global Network (MAGNET)

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: On May 15, 2008, the Department of Homeland Security originally published the SORN and associated proposed rulemaking for the Maritime Awareness Global Network (MAGNET) (DHS/USCG–061) in the **Federal Register**. The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new system of records entitled the ''United States Coast Guard's Maritime Awareness Global Network (MAGNET)'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the MAGNET system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security United States Coast Guard (Mr. Mike Payne), Intelligence Division (CG–26), 2100 2nd Street, SW., Washington, DC 20593–0001; Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703–235–0780.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 28066 (15 May 2008), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the United States Coast Guard's Maritime Awareness Global Network (MAGNET). The MAGNET system of records notice (SORN) was published concurrently in the **Federal Register**, 73 FR 28143 (15 May 2008), and comments were invited on both the proposed rule and SORN. One comment was received and the response to the comment is provided below. The Department is adopting the proposed rule as final. Additionally, a Privacy Impact Assessment for MAGNET is posted on the Department's privacy Web site. (See *http://www.dhs.gov/privacy* and follow the link to ''Privacy Impact Assessments'').

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

Public Comments

USCG received one public comment. The comment received was submitted under the incorrect docket number for the MAGNET NPRM and was related to a different notice. No other comments were submitted. Accordingly, the Department is adopting the proposed rule as final.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The

exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action 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, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph 8 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

8. The information in MAGNET establishes Maritime Domain Awareness. Maritime Domain Awareness is the collection of as much information as possible about the maritime world. In other words, MAGNET establishes a full awareness of the entities (people, places, things) and their activities within the maritime industry. MAGNET collects the information and connects the information in order to fulfill this need.

Coast Guard Intelligence (through MAGNET) will provide awareness to the field as well as to strategic planners by aggregating data from existing sources internal and external to the Coast Guard or DHS. MAGNET will correlate and provide the medium to display information such as ship registry, current ship position, crew background, passenger lists, port history, cargo, known criminal vessels, and suspect lists. Coast Guard Intelligence (CG–2) will serve as MAGNET's executive agent and will share appropriate aggregated data to other law enforcement and intelligence agencies.

(a) Pursuant to 5 U.S.C. 522a(j)(2), (k)(1), and (k)(2) this system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H), and (I), e(5), e(8), e(12), (f), and (g). These exemptions apply only to the extent that information in this system is subject to exemption. Where compliance would not appear to interfere with or adversely affect the intelligence, counterterrorism, homeland security, and related law enforcement purposes of this system, the applicable exemption may be waived by DHS.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any interest in the individual of an intelligence, counterterrorism, homeland security, law enforcement or related investigative nature. Revealing this information could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities of:

(i) Known or suspected terrorists and terrorist groups;

(ii) Groups or individuals known or believed to be assisting or associated with known or suspected terrorists or terrorist groups;

(iii) Individuals known, believed to be, or suspected of being engaged in activities constituting a threat to homeland security, including (1) activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that either cross our borders or are otherwise in violation of the immigration or customs laws and regulations of the United States; (2) activities which could reasonably be expected to assist in the development or use of a weapon of mass effect; (3) activities meant to identify, create, or exploit the vulnerabilities of, or undermine, the ''key resources'' (as defined in section 2(9) of the Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States, including the cyber and national telecommunications infrastructure and the availability of a viable national security and emergency preparedness communications infrastructure; (4) activities detrimental to the security of transportation and transportation systems; (5) activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure; (6) activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code; (7) activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States; (8) activities which impact, concern, or otherwise threaten domestic maritime safety and security, maritime mobility and navigation, or the integrity of the domestic maritime environment; (9) activities which impact, concern, or otherwise threaten the national operational capability of the Department to respond to natural and manmade major disasters and emergencies, including acts of terrorism; (10) activities involving the importation, possession, storage, development, or transportation of nuclear or radiological material without authorization or for use against the United States;

(iv) Foreign governments, organizations, or persons (foreign powers); and

(v) Individuals engaging in intelligence activities on behalf of a foreign power or terrorist group.

Thus, by notifying the record subject that he/she is the focus of such efforts or interest on the part of DHS, or other agencies with whom DHS is cooperating and to whom the disclosures were made, this information could permit the record subject to take measures to impede or evade such efforts, including the taking of steps to deceive DHS

personnel and deny them the ability to adequately assess relevant information and activities, and could inappropriately disclose to the record subject the sensitive methods and/or confidential sources used to acquire the relevant information against him/her. Moreover, where the record subject is the actual target of a law enforcement investigation, this information could permit him/her to take measures to impede the investigation, for example, by destroying evidence, intimidating potential witnesses, or avoiding detection or apprehension.

(2) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because certain records in this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to those records, should not apply.

(3) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual rights of access to and amendment of records (including the review of agency denials of either) contained in this system, which consists of intelligence, counterterrorism, homeland security, and related investigatory records concerning efforts of the Department, as described more fully in subsection (b)(1), above. Compliance with these provisions could inform or alert the subject of an intelligence, counterterrorism, homeland security, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating, of the fact and nature of such efforts, and/or the relevant intelligence, counterterrorism, homeland security, or investigatory interest of DHS and/or other intelligence, counterterrorism, or law enforcement agencies. Moreover, compliance could also compromise sensitive information either classified in the interest of national security, or which otherwise requires, as appropriate, safeguarding and protection from unauthorized disclosure; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, including interfering with intelligence or law enforcement investigative processes by permitting the destruction of evidence, improper influencing or intimidation of witnesses, fabrication of statements or testimony, and flight from detection or apprehension; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, and potential witnesses. Amendment of the records would interfere with ongoing intelligence, counterterrorism, homeland security, and law enforcement investigations and activities, including incident reporting and analysis activities, and impose an impossible administrative burden by requiring investigations, reports, and analyses to be continuously reinvestigated and revised.

(4) From subsection (e)(1) (Relevant and Necessary) because it is not always possible for DHS to know in advance of its receipt the relevance and necessity of each piece of information it acquires in the course of an intelligence, counterterrorism, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating. In the context of the authorized intelligence, counterterrorism, and investigatory activities undertaken by DHS personnel, relevance and necessity are questions of analytic judgment and timing, such that what may appear relevant and necessary when acquired ultimately may be deemed unnecessary upon further analysis and evaluation. Similarly, in some situations, it is only after acquired information is collated, analyzed, and evaluated in light of other available evidence and information that its relevance and necessity can be established or made clear. Constraining the initial acquisition of information included within the MAGNET in accordance with the relevant and necessary requirement of subsection (e)(1) could discourage the appropriate receipt of and access to information which DHS and MAGNET are otherwise authorized to receive and possess under law, and thereby impede efforts to detect, deter, prevent, disrupt, or apprehend terrorists or terrorist groups, and/or respond to terrorist or other activities which threaten homeland security. Notwithstanding this claimed exemption, which would permit the acquisition and temporary maintenance of records whose relevance to the purpose of the MAGNET may be less than fully clear, DHS will only disclose such records after determining whether such disclosures are themselves consistent with the published MAGNET routine uses. Moreover, it should be noted that, as concerns the receipt by USCG, for intelligence purposes, of information in any record which identifies a U.S. Person, as defined in Executive Order 12333, as amended, such receipt, and any subsequent use or dissemination of that identifying information, is undertaken consistent with the procedures established and adhered to by USCG pursuant to that Executive Order. Specifically, USCG intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from MAGNET, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of USCG's functions, and otherwise falls into one of a limited number of authorized categories, each of which reflects discrete activities for which information on individuals would be utilized by the Department in the overall execution of its statutory mission.

(5) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsections (e)(4) (G), (H) and (I) (Access), and (f) (Agency Rules), inasmuch as it is unnecessary for the publication of rules and procedures contemplated therein since the MAGNET, pursuant to subsections (3), above, will be exempt from the underlying duties to provide to individuals notification about, access to, and the ability to amend or correct the information pertaining to them in, this system of records. Furthermore, to the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the information accompanying the system notice for MAGNET, as published in today's **Federal Register**, exemption from it is also necessary to protect the confidentiality, privacy, and physical safety of sources of information, as well as the methods for acquiring it. Finally, greater specificity concerning the description of categories of sources of properly classified records could also compromise or otherwise cause damage to the national or homeland security.

(8) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and current as possible. In addition, in the collection of information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(9) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the

subjects of counterterrorism or law enforcement investigations to the fact of those investigations then not previously known.

(10) From subsection (e)(12) (Matching Agreements) because requiring DHS to provide notice of alterations to existing matching agreements would impair DHS operations by indicating which data elements and information are valuable to DHS's analytical functions, thereby providing harmful disclosure of information to individuals who would seek to circumvent or interfere with DHS's missions.

(11) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22606 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0082]

Privacy Act of 1974: Implementation of Exemptions; U.S. Coast Guard Law Enforcement Information Database (LEIDB)/Pathfinder

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: On May 15, 2008, the Department of Homeland Security originally published the SORN and associated proposed rulemaking for the United States Coast Guard Law Enforcement Information Data Base (LEIDB/Pathfinder) (DHS/USCG–062) in the **Federal Register**. The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of an existing system of records entitled the USCG LEIDB/Pathfinder from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the LEIDB/Pathfinder system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security United States Coast Guard, Mike Payne (LEIDB/Pathfinder System Program Officer), Intelligence Division (CG–26), 2100 2nd Street, SW., Washington, DC 20593–0001; Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703–235–0780.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 28060, 15 May 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the United States Coast Guard (USCG) Law Enforcement Intelligence Data Base (LEIDB/Pathfinder). The LEIDB system of records notice (SORN) was published concurrently in the **Federal Register**, 73 FR 28135, May 15, 2008, and comments were invited on both the proposed rule and SORN. No comments were received. Accordingly, the Department is adopting the proposed rule as final. Concurrently in this issue of the **Federal Register**, DHS is re-publishing the SORN for USCG LEIDB/Pathfinder.

This Final Rule is also updating the justification for exempting LEIDB/Pathfinder from section (e)(5) of the Privacy Act. The prior justification referenced the receipt of information from ''foreign agency record systems.'' LEIDB/Pathfinder does not receive information directly from any foreign source. Any information received from a foreign source would be evaluated and input into a USCG message as written by a USCG officer or crewman. The USCG drafted message may ultimately arrive in LEIDB. The justification has been narrowed to more accurately reflect this fact (see justifications below at Part 5, sub 6(b)(8)).

Lastly, a Privacy Impact Assessment for LEIDB/Pathfinder is posted on the Department's privacy Web site. (See *http://www.dhs.gov/privacy* and follow the link to ''Privacy Impact Assessments'').

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

Public Comments

USCG received no comments on the system of records notice or notice of proposed rulemaking. Accordingly, DHS and USCG will implement the rulemaking as proposed.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has

determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action 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, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph 9 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

9. The Law Enforcement Information Data Base (LEIDB)/Pathfinder is a historical repository of selected Coast Guard message traffic. LEIDB/Pathfinder supports law enforcement intelligence activities. LEIDB/Pathfinder users can query archived message traffic and link relevant information across multiple data records within LEIDB/Pathfinder. Users have system tools enabling the user to identify potential relationships between information contained in otherwise unrelated documents. These tools allow the analysts to build high precision and low return queries, which minimize false hits and maximize analyst productivity while working with unstructured, unformatted, free test documents.

(a) Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2) certain records or information in the above mentioned system of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (e)(5), and (8); (f), and (g). These exemptions apply only to the extent that information in this system is subject to exemption. Where compliance would not appear to interfere with or adversely affect the intelligence, counterterrorism, homeland security, and related law enforcement purposes of this system, the applicable exemption may be waived by DHS.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any interest in the individual of an intelligence, counterterrorism, homeland security, or related investigative nature. Revealing this information could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities of:

(i) Known or suspected terrorists and terrorist groups;

(ii) Groups or individuals known or believed to be assisting or associated with known or suspected terrorists or terrorist groups;

(iii) Individuals known, believed to be, or suspected of being engaged in activities constituting a threat to homeland security, including (1) activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that either cross our borders or are otherwise in violation of the immigration or customs laws and regulations of the United States; (2) activities which could reasonably be expected to assist in the development or use of a weapon of mass effect; (3) activities meant to identify, create, or exploit the vulnerabilities of, or undermine, the ''key resources'' (as defined in section 2(9) of the Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States, including the cyber and national telecommunications infrastructure and the availability of a viable national security and emergency preparedness communications infrastructure; (4) activities detrimental to the security of transportation and transportation systems; (5) activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure; (6) activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code; (7) activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States; (8) activities which impact, concern, or otherwise threaten domestic maritime safety and security, maritime mobility and navigation, or the integrity of the domestic maritime environment; (9) activities which impact, concern, or otherwise threaten the national operational capability of the Department to respond to natural and manmade major disasters and emergencies, including acts of terrorism; (10) activities involving the importation, possession, storage, development, or transportation of nuclear or radiological material without authorization or for use against the United States;

(iv) Foreign governments, organizations, or persons (foreign powers); and

(v) Individuals engaging in intelligence activities on behalf of a foreign power or terrorist group.

Thus, by notifying the record subject that he/she is the focus of such efforts or interest on the part of DHS, or other agencies with whom DHS is cooperating and to whom the disclosures were made, this information could permit the record subject to take measures to impede or evade such efforts, including the taking of steps to deceive DHS personnel and deny them the ability to adequately assess relevant information and activities, and could inappropriately disclose to the record subject the sensitive methods and/or confidential sources used to acquire the relevant information against him/her. Moreover, where the record subject is the actual target of a law enforcement investigation, this information could permit him/her to take measures to impede the investigation, for example, by destroying evidence, intimidating potential witnesses, or avoiding detection or apprehension.

(2) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because certain records in this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to those records, should not apply.

(3) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual rights of access to and amendment of records (including the review of agency denials of either) contained in this system, which consists of intelligence, counterterrorism, homeland security, and related investigatory records concerning efforts of the Department, as described more fully in subsection (b)(1), above. Compliance with these provisions could inform or alert the subject of an intelligence, counterterrorism, homeland security, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating, of the fact and nature of such efforts, and/or the relevant intelligence, counterterrorism, homeland security, or investigatory interest of DHS and/or other intelligence, counterterrorism, or law enforcement agencies. Moreover,

compliance could also compromise sensitive information either classified in the interest of national security, or which otherwise requires, as appropriate, safeguarding and protection from unauthorized disclosure; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, including interfering with intelligence or law enforcement investigative processes by permitting the destruction of evidence, improper influencing or intimidation of witnesses, fabrication of statements or testimony, and flight from detection or apprehension; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, and potential witnesses. Amendment of the records would interfere with ongoing intelligence, counterterrorism, homeland security, and law enforcement investigations and activities, including incident reporting and analysis activities, and impose an impossible administrative burden by requiring investigations, reports, and analyses to be continuously reinvestigated and revised.

(4) From subsection (e)(1) (Relevant and Necessary) because it is not always possible for DHS to know in advance of its receipt the relevance and necessity of each piece of information it acquires in the course of an intelligence, counterterrorism, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating. In the context of the authorized intelligence, counterterrorism, and investigatory activities undertaken by DHS personnel, relevance and necessity are questions of analytic judgment and timing, such that what may appear relevant and necessary when acquired ultimately may be deemed unnecessary upon further analysis and evaluation. Similarly, in some situations, it is only after acquired information is collated, analyzed, and evaluated in light of other available evidence and information that its relevance and necessity can be established or made clear. Constraining the initial acquisition of information included within the LEIDB in accordance with the relevant and necessary requirement of subsection (e)(1) could discourage the appropriate receipt of and access to information which DHS and USCG are otherwise authorized to receive and possess under law, and thereby impede efforts to detect, deter, prevent, disrupt, or apprehend terrorists or terrorist groups, and/or respond to terrorist or other activities which threaten homeland security. Notwithstanding this claimed exemption, which would permit the acquisition and temporary maintenance of records whose relevance to the purpose of the LEIDB may be less than fully clear, DHS will only disclose such records after determining whether such disclosures are themselves consistent with the published LEIDB routine uses. Moreover, it should be noted that, as concerns the receipt by USCG, for intelligence purposes, of information in any record which identifies a U.S. Person, as defined in Executive Order 12333, as amended, such receipt, and any subsequent use or dissemination of that identifying information, is undertaken consistent with the procedures established and adhered to by USCG pursuant to that Executive Order. Specifically, USCG intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from LEIDB, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of USCG's functions, and otherwise falls into one of a limited number of authorized categories, each of which reflects discrete activities for which information on individuals would be utilized by the Department in the overall execution of its statutory mission.

(5) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsections (e)(4) (G), (H) and (I) (Access), inasmuch as it is unnecessary for the publication of rules and procedures contemplated therein since the LEIDB, pursuant to subsections (2) and (3), above, will be exempt from the underlying duties to provide to individuals notification about, access to, and the ability to amend or correct the information pertaining to them in, this system of records. Furthermore, to the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the information accompanying the system notice for LEIDB, as published in today's **Federal Register**, exemption from it is also necessary to protect the confidentiality, privacy, and physical safety of sources of information, as well as the methods for acquiring it. Finally, greater specificity concerning the description of categories of sources of properly classified records could also compromise or otherwise cause damage to the national or homeland security.

(8) From subsection (e)(5) (Collection of Information) because many of the records contained in this system are derived from other domestic and foreign sources, it is not possible for DHS to vouch for those records' compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and current as possible. In addition, in the collection of information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(9) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations then not previously known.

(10) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d). Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained under procedures described in the related SORN or Subpart B of this Part.

(11) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22613 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0081]

Privacy Act of 1974: System of Records

AGENCY: Privacy Office, DHS.

ACTION: Re-publication of a Notice of Privacy system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security is re-publishing this system of records notice (SORN) entitled the United States Coast Guard (USCG) Law Enforcement Information Data Base (LEIDB)/Pathfinder.

On May 15, 2008, DHS originally published the SORN and associated proposed rulemaking (DHS/USCG–062) in the **Federal Register**. DHS received no comments on the system of records notice and proposed rulemaking. Accordingly, DHS is republishing this SORN as final. A final rulemaking is also published in this issue of the **Federal Register** in which the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: The established system of records was effective as of February 29, 2008, based upon the prior LEIDB system of records notice published on January 30, 2008.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact: Mike Payne (LEIDB/Pathfinder System Program Officer), Intelligence Division (CG–26), Phone 202–372–2795 or by mail correspondence: U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. For privacy issues, please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background Information

Law Enforcement Information Data Base (LEIDB/Pathfinder) is operated and controlled by the United States Coast Guard, United States Department of Homeland Security. The Assistant Commandant for Intelligence and Criminal Investigations through the Office of Intelligence, Surveillance, Reconnaissance Systems and Technology, Division of Data Analysis and Manipulation (CG–262), is responsible for managing the system for the Coast Guard.

LEIDB/Pathfinder was developed to efficiently manage field-created intelligence and law enforcement related reports. These intelligence reports vary in content but are submitted in a standard Coast Guard message format which is electronically distributed through the Coast Guard Message System (CGMS) (and to a lesser extent the Defense Messaging System). CGMS is the system by which the Coast Guard manages all general message traffic to and from Coast Guard components and commands. After processing and delivering a message, CGMS archives the message for 30 days before they are deleted regardless of the content of the message.

The Assistant Commandant for Intelligence and Criminal Investigations (CG–2) identified a need to archive messages for more than thirty (30) days and to be able to perform analysis of the data contained within the messages to support law enforcement (LE) and intelligence activities. LEIDB/Pathfinder was developed and implemented to support these requirements.

All messages sent to the LEIDB/Pathfinder address on the CGMS are organized within LEIDB/Pathfinder based on message type (*e.g.*, Field Intelligence Report), when the information was sent, and by whom the information may be accessed. This allows for easy segregation of information based on user access controls.

Users rely on LEIDB/Pathfinder as an archival system to find and retrieve records relevant to their analyses. Users of LEIDB/Pathfinder include intelligence analysts, watch officers, field intelligence officers and intelligence staff officers, and criminal investigators. Use of LEIDB/Pathfinder obviates the need for individual analysts to compile records in a local storage system, which reduces the risk of loss or of unauthorized access to intelligence reports. Analysts rely on LEIDB/Pathfinder as the means to retrieve records. Searching through unstructured text allows the users to develop search terms that retrieve all messages relevant to an inquiry without reviewing irrelevant records. Messages contained in LEIDB/Pathfinder are not machine processed in any fashion to enable data manipulation.

LEIDB/Pathfinder includes tools for analysts to conduct data correlation, analysis, and display of data in reports. These tools enable an analyst to sort, search, and process locally stored records. LEIDB/Pathfinder does not do predictive analysis. Any search results returned to the user are based on the search criteria entered by the user. LEIDB/Pathfinder is a repository for certain CGMS messages; users must craft their own searches.

This system will contain information about physical characteristics of ports, vessels, and other maritime infrastructure. The physical characteristics may include security vulnerabilities, strengths and natural or man made attributes. This system will also contain information about individuals. The individuals will be U.S. Citizens, Lawful Permanent Residents, as well as, foreign nationals with whom the Coast Guard interacts, or can reasonably expect to interact, in the maritime environment. These individuals will be owners and operators of vessels, maritime facilities or otherwise engaged in maritime activities.

Elsewhere in today's **Federal Register**, DHS has published a final rule exempting this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

Public Comments

USCG received no public comments on the original system of records notice and proposed rulemaking. Accordingly, DHS and USCG are implementing the system of records and exemptions as proposed.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals of the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency.

In accordance with 5 U.S.C. 552a(r), a report concerning this record system has

been sent to the Congress and to the Office of Management and Budget.

SYSTEM OF RECORDS DHS/USCG–062

SYSTEM NAME:

Law Enforcement Information Database (LEIDB)/Pathfinder

SECURITY CLASSIFICATION:

Sensitive but unclassified to Classified, Secret.

SYSTEM LOCATION:

The computer database is located at U.S. Coast Guard Intelligence Coordination Center, Department of Homeland Security, National Maritime Intelligence Center, Washington, DC, 20395.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Individuals, U.S. citizens, lawful permanent residents, and foreign nationals, associated with vessels, facilities, companies, and organizations, engaged in commercial and recreational maritime activity on or adjacent to waters subject to the jurisdiction of the United States.

B. Individuals, U.S. citizens, lawful permanent residents, and foreign nationals, identified during enforcement actions taken by enforcement Officials and employees of the Coast Guard while enforcing United States (U.S.) law, international law, or treaties.

C. Individuals, U.S. citizens, resident aliens, and foreign nationals, directly and indirectly associated with individuals listed in paragraphs A and B of this section

D. Individuals, U.S. citizens, resident aliens, and foreign nationals, directly and indirectly associated with vessels, maritime facilities and other maritime infrastructure which are known, suspected, or alleged to be involved in illegal activity (e.g. contraband trafficking, illegal migrant smuggling, or terrorist activity).

E. Individuals, U.S. citizens, resident aliens, and foreign nationals, identified during a terrorist screening process as a possible identity match to a known or suspected terrorist.

F. Individuals, U.S. citizens, resident aliens, and foreign nationals, identified in or reasonably believed to be related to reports submitted by Coast Guard personnel engaged in enforcement boarding's, safety inspections, aircraft over-flights or other means of observation, and other Coast Guard operational activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

LEIDB/Pathfinder contains:

A. Messages delivered to the system automatically from the Coast Guard Messaging System (CGMS) or the Defense Messaging System (DMS). Additional data records may be delivered to LEIDB/Pathfinder by Coast Guard Intelligence personnel through an electronic mail interface.

B. Field Intelligence Reports (FIR) generated by any Coast Guard unit that observes or otherwise obtains information they believe may be relevant to security threats, vulnerabilities or criminal activity.

C. Request For Information (RFI) generated by any Coast Guard unit as a request for assistance from the Intelligence program to better understand a situation.

D. Intelligence Information Report (IIR) generated by select Coast Guard units and other government agencies able to issue a standardized Department of Defense message reporting information relevant to intelligence requirements.

E. Situation Reports (SITREPS) generated by Coast Guard operational units engaged in operations providing a status update to a developing or ongoing operation.

F. Operational Status Reports (OPSTAT), generated by Coast Guard operational units to report on operational capability of personnel, units, and stations.

G. Operations Reports (OPREPS) generated by Coast Guard operational units to report the conclusion of an operation.

H. Any other operational reports in any format that contain information with intelligence value are also included and can be transmitted through CGMS or DMS.

I. Data records related to known, suspected, or alleged criminals as well as individuals associated with them (e.g. immigrants being smuggled) to include individuals engaged in terrorist activity in the Maritime domain.

J. Data records on facilities and their characteristics including: geographic location, commodities handled, equipment, certificates, inspection data, pollution incidents, casualties, and violations of all laws and international treaties, if applicable.

K. Data records on individuals associated with facilities and information pertaining to directly and indirectly related individuals, companies, and organizations associated with those facilities such as owners, operators, managers, and employees.

The above reports may have the following types of biographical information: names, aliases, dates of birth, phone numbers, addresses, nationality, identification numbers such as A-File Number, Social Security Number, or driver's license number, employer, boat registration numbers, and physical characteristics. No biometric data is collected or maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, Title 44 U.S.C. 3101; Title 36, Code of Federal Regulations, chapter XII; The Maritime Transportation Security Act of 2002, Pub L. 107–295 The Homeland Security Act of 2002, Pub L. 107–296; 5 U.S.C. 301; 14 U.S.C. 93, 14 U.S.C. 632; 46 U.S.C. 2306, 46 U.S.C. 3717; 46 U.S.C. 12501; 33 U.S.C. 1221 *et seq.*

PURPOSE(S):

LEIDB/Pathfinder enables Coast Guard Intelligence program personnel to manage Coast Guard message traffic that contains law enforcement information collected by Coast Guard Officers and employees in the course of their statutory duties. It also enables analysis of that information to improve the effectiveness and efficiency of Coast Guard mission performance. The Coast Guard Intelligence Program supports the full range of Coast Guard missions through data collection and analysis to meet operational Commanders information requirements. One reason for collection is to improve the awareness of operational Commanders such that they will be optimally positioned to provide services to the public. Another reason is to assist in the detection, prevention, and mitigation of all unlawful acts that occur within the maritime environment and to support responses to man made or naturally occurring threats to public safety. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3):

A. To an appropriate Federal, State, territorial, tribal, local, international, or foreign government intelligence entity, counterterrorism agency, or other appropriate authority charged with investigating threats or potential threats to national or international security or assisting in counterterrorism efforts, where a record, either on its face or in conjunction with other information, identifies a threat or potential threat to national or international security, or DHS reasonably believes the information may be useful in countering

a threat or potential treat, which includes terrorist and espionage activities, and disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

B. To a Federal State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

C. To appropriate Federal, state, local, tribal, foreign governmental agencies, multilateral governmental organizations, and non-governmental or private organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

D. To U.S. Department of Defense and related entities including, but not limited to, the Military Sealift Command and the U.S. Navy, to provide safety and security information on vessels or facilities chartered, leased, or operated by those agencies.

E. To a Federal, State, or local agency responsible for response and recovery operations caused by a man made or naturally occurring disaster for use in such operations.

F. To the National Transportation Safety Board and its related State counterparts for safety investigation and transportation safety.

G. To the International Maritime Organization (IMO), intergovernmental organizations, nongovernmental organizations, or foreign governments in order to conduct investigations, operations, and inspections pursuant to its authority.

H. To Federal, State, or local agencies or foreign government agencies pertaining to marine environmental protection activities.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

J. To contractors, grantees, experts, and consultants, performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a DHS function related to this system of records.

K. To an appropriate federal, state, territorial, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

L. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS or any component thereof, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

M. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

N. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

O. To a federal, state, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

No disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in electronic form in an automated data processing (ADP) system operated and maintained by the U.S. Coast Guard. Backups are performed daily. Copies of backups are stored at an offsite location. Personal, Sensitive but Unclassified (SBU), Unclassified, and Classified data and records reside commingled with each other. Classified and non-classified information are merged on a classified domain.

Data is stored electronically. Short term data extracts may be in paper or electronic form for the duration of a specific analytic project or activity. Data extracts are stored in appropriately classified storage containers or on secured electronic media in accordance with existing security requirements.

Extracted unclassified information will be stored in accordance with DHS Management Directive governing the marking, storage, and handling of unclassified sensitive information. Unclassified information derived from LEIDB/Pathfinder remains U.S. Coast Guard information and is For Official Use Only. Determinations by any user to further disseminate, in any form, LEIDB/Pathfinder derived information to other entities or agencies, foreign or domestic, must include prior authorization from the appropriate supervisor authorized to make such determinations.

RETRIEVABILITY:

Information can be retrieved from LEIDB/Pathfinder via text string search submitted in Boolean language query format. Data records in LEIDB/Pathfinder do not rely on normalization or correlation to manipulate data, there are no prescribed data fields for LEIDB/Pathfinder data records.

Records retrieval through string searches enables data association by any term, including personal identifier. Unstructured text in a data record can be matched to any other data record. Specifically, information on individuals may be retrieved by matching individual name, Social Security Number, passport number, or the individual's relationship to a vessel (e.g., owner, shipper, consignee, crew member, passenger, etc.). Information may also be an innumerable amount of non-identifying information such as vessel name, vessel type, port location, port status, etc.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. Physical locations are locked after normal duty hours and the facilities are protected from the outside by security personnel.

LEIDB/Pathfinder falls under the security guidelines of the National Maritime Intelligence Center (NMIC) and has its own approved System Security Plan which provides that:

All classified LEIDB/Pathfinder equipment, records and storage devices are located within facilities or stored in containers approved for the storage of all levels of classified information.

All statutory and regulatory requirements pertinent to classified and unclassified information have been identified in the LEIDB/Pathfinder System Security Plan and have been implemented.

Access to records requiring SECRET level is limited strictly to personnel with SECRET or higher level clearances and who have been determined to have the appropriate ''need to know''.

Access to records requiring CONFIDENTIAL level is limited strictly to personnel with CONFIDENTIAL or higher level clearances and who have been determined to have the appropriate ''need to know''.

Access to all records is restricted by login and password protection. The scope of access to any records via login and password is further limited based on the official need of each individual authorized access. The U.S. Coast Guard will take precautions in accordance with OMB Circular A–130, Appendix III.

The U.S. Coast Guard will operate LEIDB/Pathfinder in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program. Specific Coast Guard operating rules include Command certification that an individual Officer or employee requires access to LEIDB/Pathfinder to perform official duties. Individual Officers and employees must certify knowledge of Coast Guard policies limiting the use of PII and FOUO information. Individual Officers and employees must certify agreement to proper use of data records contained in LEIDB/Pathfinder and must agree to meet minimum security requirements.

RETENTION AND DISPOSAL:

All records, but not including audit records maintained to document user access to information relating to specific individuals, are maintained within the system for ten (10) years. These records are then destroyed. Audit records are maintained for five years from the date of last use by any given user then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Homeland Security United States Coast Guard, Assistant Commandant for Intelligence and Criminal Investigations (CG–2), Office of ISR Systems and Technology, Data Analysis and Manipulation Division (CG–262), 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j)(2) and (k)(1) and (k)(2) of the Privacy Act.

General inquiries regarding LEIDB/Pathfinder may be directed to Department of Homeland Security United States Coast Guard, Assistant Commandant for Intelligence and Criminal Investigations (CG–2), Office of ISR Systems and Technology, Data Analysis and Manipulation Division (CG–262), 2100 2nd Street, SW., Washington, DC 20593–0001. Submit a written request that includes your name, mailing address, and Social Security number to the above listed system manager.

RECORD ACCESS PROCEDURE:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j)(2) and (k)(1) and (k)(2) of the Privacy Act. Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Write the FOIA/Privacy Act Officer (CG–611), FOIA/Privacy Act Request at the address given above in accordance with the ''Notification Procedure''.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted to you under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose form the Director, Disclosure and FOIA, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Further information may also be found at www.dhs.gov/foia.

CONTESTING RECORD PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j)(2) and (k)(1) and (k)(2) of the Privacy Act. A request to amend non-exempt records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

RECORD SOURCE CATEGORIES:

Information contained in LEIDB/Pathfinder is gathered from a variety of sources both internal and external to the Coast Guard. Source information may come from at sea boardings, investigations, vessel notice of arrival reports, U.S. Coast Guard personnel (both direct observations and interviews of non-Coast Guard personnel), law enforcement notices, commercial sources, as well as other federal, state, local and international agencies who are related to the maritime sector and/or national security sector.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act, the records and information in this system are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) of the Privacy Act the records and information in the system are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). A Final Rule for exempting this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and is being published [in 6 CFR Part 5] concurrently with publication of this re-publication of the system of records notice, and the proposed rulemaking receiving no public comments.

Dated: September 11, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–22612 Filed 9–29–08; 8:45 am]

BILLING CODE 4410–10–P

Reader Aids

Federal Register

Vol. 73, No. 190

Tuesday, September 30, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids **202–741–6000**
Laws **741–6000**

Presidential Documents
Executive orders and proclamations **741–6000**
The United States Government Manual **741–6000**

Other Services
Electronic and on-line services (voice) **741–6020**
Privacy Act Compilation **741–6064**
Public Laws Update Service (numbers, dates, etc.) **741–6043**
TTY for the deaf-and-hard-of-hearing **741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51209–51350 2
51351–51572 3
51573–51716 4
51717–51898 5
51899–52170 8
52171–52572 9
52573–52774 10
52775–52902 11
52903–53104 12
53105–53354 15
53355–53684 16
53685–54056 17
54057–54288 18
54289–54486 19
54487–54664 22
54665–54926 23
54927–55430 24
55431–55682 25
55683–56446 26
56447–56702 29
56703–56934 30

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
1 55776
182 55776

3 CFR

Executive Orders:
13473 56703

Proclamations:
7463 (See Notice of August 28, 2008) 51211
8284 51213
8285 51897
8286 52773
8287 54051
8288 54053
8289 54289
8290 54485
8291 54923
8292 54925
8293 56447

Executive Orders:
13285 (Amended by 13471) 51209
13471 51209
13472 53353

Administrative Orders:
Memorandums:
Memorandum of September 18, 2008 54487
Memorandum of September 25, 2008 56701
Notices:
Notice of August 28, 2008 51211
Notice of September 18, 2008 54489
Presidential Determinations:
No. 2008-23 of July 25, 2008 54281
No. 2008-24 of August 15, 2008 54283
No. 2008-25 of August 28, 2008 54285
No. 2008-26 of September 10, 2008 54287
No. 2008-27 of September 12, 2008 54055
No. 2008-28 of September 15, 2008 54927

5 CFR

532 54057
9901 56344

Proposed Rules:
302 51944
330 51944
332 51245
335 51944
337 51944
410 ..... 51248, 51944
412 51248
752 54075

6 CFR

5 ..... 56922, 56924, 56927

7 CFR

2 56705
6 53355
205 54057
210 52903
220 52903
301 51717
319 54665
457 51573
550 54291
613 51351
650 54667
922 54668
946 52573
948 52171
1000 51352
1150 56449
1291 51585
1951 54305
3430 51717
4274 54305

Proposed Rules:
301 54082
761 56754
762 56754
915 54740
1728 56513
1755 56513
Ch. XXXIV 54987, 54988

8 CFR

103 55683
214 55683

9 CFR

71 ..... 52173, 54059
77 ..... 52775, 54059, 54063
78 ..... 51353, 54059
79 54059
80 54059
83 52173
93 52173
317 52189
318 52193
381 ..... 51899, 52189, 52193
430 51355
439 52193
442 52189

Proposed Rules:
94 54083
95 54083

10 CFR

2.....54671
13.....54671
50.....52730, 54931
140.....56451
900.....54456
Proposed Rules:
50.....54744
73.....51378
430.....54089
900.....54461

11 CFR

Ch. II.....54256
9409.....54270
9411.....54270
9420.....54270
Proposed Rules:
100.....51960
104.....51960

12 CFR

3.....55704
8.....52576
202.....53685
208.....55706
223.....54307, 55708
225.....55706
229.....52908
303.....55431, 55432
308.....55432
309.....55432
330.....56706
906.....56712
915.....55710
1206.....56712
1261.....55710
1231 .....53356, 54309, 54673
1701.....56712
Proposed Rules:
3.....56756
208.....56756
225.....56756
325.....56756
567.....

13 CFR

123.....54673

14 CFR

23.....54675
33.....55435
39 .....51903, 51906, 51908, 51910, 51912, 52201, 52203, 52205, 52777, 52909, 52911, 52914, 53105, 54065, 54067, 54491, 54492, 54677, 56452, 56454, 56457, 56460, 56462, 56464, 56468
47.....55722
71 .....51356, 51357, 52208, 52209, 53113, 54494, 55438, 55722, 56470, 56471, 56473, 56474, 56475, 56476
73 .....52916, 53359, 55723
95.....51591
97 .....51215, 51358, 52779, 52782, 54496, 54497
382.....53114
Proposed Rules:
39 .....51252, 51384, 51382, 51604, 51961, 52932, 53764, 53766, 53768, 53770, 53773, 54747, 54749, 54751, 54755, 55456, 55781, 55786, 56763, 56765
71 .....51252, 51254, 51605, 52638, 52934, 54091, 54092, 54093, 54989, 56528
93.....55788

15 CFR

736.....54499
738.....51217
740.....51217
744.....54499
774.....51718
902.....54932
Proposed Rules:
801.....54095
806.....52800, 52802
922.....53161

16 CFR

Proposed Rules:
317.....53393, 53394
455.....55458
1500.....51384, 51386

17 CFR

3.....54069
30.....54069
232.....54943
239.....52752
240.....52752
249.....52752
Proposed Rules:
1.....54097
38.....54097
40.....51961
41.....51961
145.....51961

18 CFR

260.....55726
284.....55726
385.....55726
410.....55750
Proposed Rules:
35.....51744
40.....55459
284.....55460

19 CFR

10.....56715
12.....54309
122.....52577
163.....56715
178.....56715
Proposed Rules:
4.....51962
7.....51962
10.....51962
102.....51962
134.....51962
177.....51962

20 CFR

Proposed Rules:
404.....51963
408.....51963
416.....51963
422.....51963

21 CFR

16.....51912, 54314
101.....56477
210.....51919
211.....51919
314.....56487
520.....53685
610.....54314
640.....54314
803.....53686
812.....54314
814.....54314
822.....54314
860.....54314
1240.....51912
Proposed Rules:
1.....54106
129.....53775
165.....53775
314.....56529
878.....52804
1308.....56533

22 CFR

41.....56729
121.....54314
122.....52578, 55439
126.....55441
129.....55439
1304.....53686

24 CFR

206.....51596
Proposed Rules:
26.....52122
28.....52130
201.....53346
203.....53346
1003.....52166

25 CFR

Proposed Rules:
293.....51255

26 CFR

1 .....51719, 52528, 53934, 54945
301.....52784
602.....52528, 53934
Proposed Rules:
1 .....51747, 52218, 52220, 53793, 54990, 56534, 56535
301.....52805

28 CFR

0.....54946
Proposed Rules:
20.....55794
25.....54544

29 CFR

2200.....56491
2203.....56491
4022.....53115
4044.....53115
Proposed Rules:
1910 .....54118, 54123, 54340
1915.....54123, 54340
1917.....54123
1918.....54123
1926.....54123
2700.....51256

30 CFR

6.....52210
7.....52210
15.....52210
18.....52210
19.....52210
20.....52210
22.....52210
23.....52210
27.....52210
28.....52210
33.....52210
35.....52210
36.....52210
49.....53116
74.....52210
75.....53124
256.....52917
901.....54679
934.....52921
Proposed Rules:
56.....52136, 55800
57.....52136, 55800
66.....52136, 55800
250.....53793

31 CFR

1.....51218
50.....53359
210.....52578
501.....51933
Proposed Rules:
50.....53798, 56767

33 CFR

100.....51221, 54947
105 .....52924, 53128, 56730
117 .....51361, 52924, 52925, 54072, 54682
138.....53691
151.....56492
165 .....51362, 51365, 51597, 51719, 51941, 52788, 53128, 54315, 54684, 54686, 54689, 54950, 54952
334.....52926, 54072
Proposed Rules:
100.....56537
117.....52934
138.....54997
165 .....53395, 53398, 54757, 56773

34 CFR

Proposed Rules:
Ch. VI.....51990

36 CFR

7.....54317
215.....53705
218.....53705
Proposed Rules:
223.....51388
294.....54125

38 CFR

3.....54691
4.....54693, 54708

39 CFR

111.....54712, 56501
3020.....51714, 55422
Proposed Rules:
3001 .....51888, 51983, 53324, 55464
3030.....51888
3031.....51888
3050.....53324
3060.....54468

40 CFR

35.....52584
52 .....51222, 51226, 51599,

53130, 53132, 53134, 53137, 53366, 53373, 53378, 53716
55 53718
60 55751
70 53137
130 52928
131 53140
174 52591
180 ..... 51722, 51727, 51732, 51736, 51738, 52594, 52597, 52603, 52607, 52616, 53721, 53725, 53732, 54954, 54963, 54969, 54973
261 54713
282 53742
300 ..... 51368, 53143

Proposed Rules:

52 ..... 51257, 51258, 51606, 52226, 53162, 53163, 53401, 53403, 53404, 55466
55 51610
63 53163
70 53163
81 51259
131 53178
261 ..... 54760, 54770
271 56775
300 ..... 51393, 53179

41 CFR

302-17 51228

42 CFR

412 52928
417 ..... 54073, 54226
421 55753
422 ..... 54208, 54226, 55763
423 ..... 54208, 54226, 55763
455 55765

43 CFR

423 54977
3000 54717

Proposed Rules:

419 53180

44 CFR

64 ..... 53747, 53748, 56731
65 ..... 52619, 53750, 54321, 56737
67 ..... 52621, 55442

Proposed Rules:

67 ..... 51400, 52230, 52233, 52234, 53809, 53814, 55469, 56779

45 CFR

5b 55772
2 53148
302 56422
303 56422
307 56422
2510 53752
2513 53752
2516 53752
2517 53752
2520 53752
2521 53752
2522 53752
2523 53752
2524 53752
2540 53752
2541 53752
2550 53752

46 CFR

1 56505
10 ..... 52789, 56505
12 56505
13 56505
14 56505
15 ..... 52789, 56505
28 56505
31 56505
71 56505
91 56505
107 56505
150 56505
176 56505
390 56738
401 56505
402 56505

47 CFR

2 51375
10 54511
15 51375
22 55450
27 ..... 51375, 54324
63 56741
73 ..... 52213, 54073, 54324
74 51375
97 54074
101 55775
301 54325

Proposed Rules:

2 51406
15 51406
20 ..... 55473, 56540
27 51406
73 52937
74 51406

48 CFR

Ch. 1 ..... 53990, 54016
2 ..... 53992, 53993
4 53994
5 53995
6 ..... 53995, 53996
8 53994
9 53994
12 ..... 53995, 53997, 54007
13 54008
15 54016
16 54008
18 ..... 53994, 53995
19 53993
23 54011
26 53995
30 ..... 54011, 54013
32 53997
33 53997
36 53997
37 54014
42 53997
44 53994
51 55450
52 ..... 53992, 53994, 53995, 53997, 54011, 54013, 54014, 54016
202 53151
206 53151
225 53151
237 53156
252 53151
422 55450
511 54334
516 54334
532 54334
538 54334
546 54334
552 54334

Proposed Rules:

204 55007
237 55007
239 55007
245 55007
252 55007
505 53404
1652 51260
1819 54340
1852 54340
9904 51261

49 CFR

385 53383
571 54526
593 56741
594 54981
605 53384

Proposed Rules:

172 52558
192 ..... 52938, 53076
193 53076
195 53076
225 52496
571 ..... 52939, 54020, 55801, 58804
665 56781

50 CFR

20 ..... 51704, 55602, 55630, 55676
21 55450
216 53157
223 55451
229 51228
300 ..... 52795, 54932
600 54721
635 54721
648 ..... 51743, 52214, 52634, 52635, 52929, 53158, 54735
660 ..... 53763, 54737
679 ..... 51242, 51243, 51601, 51602, 52217, 52637, 52797, 52798, 52929, 52930, 53159, 53390, 54737, 54738, 56511

Proposed Rules:

17 ..... 51415, 52235, 52257, 53492, 54125, 54345
223 51615
224 ..... 51415, 51615
226 ..... 51747, 52084
402 52942
600 54132
622 51617
665 51992
679 ..... 53816, 55010, 55368
680 ..... 52806, 54346, 55368

REMINDERS

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.

RULES GOING INTO EFFECT SEPTEMBER 30, 2008

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts; published 8-1-08

National Dairy Promotion and Research Program; Final Rule on Amendments to the Dairy Promotion and Research Order; published 9-29-08

AGRICULTURE DEPARTMENT

Revision of Delegation of Authority; published 9-30-08

FEDERAL COMMUNICATIONS COMMISSION

Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau; Correction; published 9-30-08

FEDERAL HOUSING FINANCE BOARD

Assessments; published 9-30-08

FEDERAL HOUSING FINANCING AGENCY

Assessments; published 9-30-08

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Haitian Hemispheric Opportunity Through Partnership Encouragement Acts (of 2006 and 2008); published 9-30-08

HOMELAND SECURITY DEPARTMENT

Coast Guard

Safety Zones:

Chicago Harbor, Navy Pier East, Chicago, IL; published 9-3-08

HOMELAND SECURITY DEPARTMENT

Privacy Act; Systems of Records; published 9-30-08

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Assessments; published 9-30-08

STATE DEPARTMENT

Visas:

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; published 9-30-08

TRANSPORTATION DEPARTMENT

Maritime Administration

Capital Construction Fund; published 9-30-08

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

List of Nonconforming Vehicles Eligible for Importation; published 9-30-08

TREASURY DEPARTMENT

Haitian Hemispheric Opportunity Through Partnership Encouragement Acts (of 2006 and 2008); published 9-30-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados Grown in South Florida; Revisions to Grade and Container Requirements; comments due by 10-8-08; published 9-23-08 [FR E8-22147]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries in the Western Pacific:

Crustacean Fisheries; Deepwater Shrimp; comments due by 10-6-08; published 8-22-08 [FR E8-19579]

Fisheries in the Western Pacific; Pelagic Fisheries; Squid Jig Fisheries; comments due by 10-10-08; published 8-11-08 [FR E8-18404]

Marine Mammals; comments due by 10-8-08; published 9-8-08 [FR E8-20773]

COMMERCE DEPARTMENT

Patent and Trademark Office

Changes to Practice for Documents Submitted; comments due by 10-6-08; published 8-6-08 [FR E8-18025]

EDUCATION DEPARTMENT

Office of Postsecondary Education; Notice of Negotiated Rulemaking:

For Programs Authorized Under Title IV and Title II of the Higher Education Act of 1965, as Amended; comments due by 10-8-08; published 9-8-08 [FR E8-20776]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Implementation Plans:

Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules; comments due by 10-6-08; published 9-4-08 [FR E8-20388]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Outer Continental Shelf Air Regulations Consistency Update for Florida; comments due by 10-6-08; published 9-4-08 [FR E8-20385]

Pesticide Tolerances:

Difenoconazole; comments due by 10-6-08; published 8-6-08 [FR E8-17937]

Dodine; comments due by 10-6-08; published 8-6-08 [FR E8-17934]

Tolerance Exemptions:

Bacillus thuringiensis Vip3Aa Proteins in Corn and Cotton; comments due by 10-6-08; published 8-6-08 [FR E8-17931]

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 10-7-08; published 8-8-08 [FR E8-18360]

Wireless E911 Location Accuracy Requirements; comments due by 10-6-08; published 9-25-08 [FR E8-22645]

Wireless E911 Location Accuracy Requirements; Correction; comments due by 10-6-08; published 9-29-08 [FR E8-22932]

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitration Services; comments due by 10-6-08; published 8-6-08 [FR E8-17674]

GENERAL SERVICES ADMINISTRATION

General Services Acquisition Regulation:

Rewrite of GSAR Part 546, Quality Assurance; comments due by 10-6-08; published 8-5-08 [FR E8-17902]

General Services Acquisition Regulation; GSAR Case 2006G517; Rewrite of GSAR Part 528, Bonds and Insurance; comments due by 10-6-08; published 8-5-08 [FR E8-17938]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Temporary Assistance for Needy Families (TANF) Program:

Elimination of Enhanced Caseload Reduction Credit for Excess Maintenance-of-Effort Expenditures; comments due by 10-7-08; published 8-8-08 [FR E8-18208]

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Electronic Payment and Refund of Quarterly Harbor Maintenance Fees; comments due by 10-6-08; published 8-5-08 [FR E8-17967]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge Operation Regulation:

Intracoastal Waterway (ICW), Barnegat Bay, Seaside Heights, NJ; comments due by 10-6-08; published 8-22-08 [FR E8-19530]

Drawbridge Operation Regulations:

Harlem River, New York, NY; comments due by 10-6-08; published 8-7-08 [FR E8-18175]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Streamlining Public Housing Programs; comments due by 10-6-08; published 8-5-08 [FR E8-17839]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reclassification:

Hawaiian Hawk or Io (Buteo solitarius); comments due by 10-6-08; published 8-6-08 [FR E8-16858]

LABOR DEPARTMENT

Employee Benefits Security Administration

Investment Advice; Participants and Beneficiaries; comments due by 10-6-08; published 8-22-08 [FR E8-19272]

LABOR DEPARTMENT

Mine Safety and Health Administration

Alcohol- and Drug-Free Mines; Policy, Prohibitions, Testing, Training, and Assistance; comments due by 10-8-08; published 9-8-08 [FR E8-20561]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Personal Identity Verification of Contractors; comments due by 10-6-08; published 8-6-08 [FR E8-17951]

POSTAL REGULATORY COMMISSION

Administrative Practice and Procedure, Postal Service; comments due by 10-6-08; published 9-5-08 [FR E8-20581]

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Proposed Rule Changes:

New York Stock Exchange LLC; comments due by 10-6-08; published 9-15-08 [FR E8-21333]

NYSE Arca, Inc.; comments due by 10-7-08; published 9-16-08 [FR E8-21526]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Allied Ag Cat Productions, Inc. G-164 Series Airplanes; comments due by 10-6-08; published 8-7-08 [FR E8-18228]

Boeing Model 767-200 and 767-300 Series Airplanes; comments due by 10-6-08; published 8-21-08 [FR E8-19363]

Cessna Aircraft Company (type certificate previously held by Columbia Aircraft Manufacturing) Models LC40-550FG, LC41-550FG, and LC42-550FG Airplanes; comments due by 10-6-08; published 8-7-08 [FR E8-18231]

Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing) Models LC40-550FG, et al.; Correction; comments due by 10-6-08; published 9-2-08 [FR E8-20200]

Cessna Model 560 Airplanes; comments due by 10-6-08; published 8-21-08 [FR E8-19386]

Eclipse Aviation Corp. Model EA500 Airplanes; comments due by 10-6-08; published 8-7-08 [FR E8-17786]

Honeywell Flight Management Systems Equipped with Honeywell NZ 2000 Navigation Computers and Honeywell IC 800 or IC-800E Integrated Avionics Computers; comments due by 10-6-08; published 8-21-08 [FR E8-19361]

TREASURY DEPARTMENT

Internal Revenue Service

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 10-7-08; published 8-8-08 [FR E8-18221]

Election to Expense Certain Refineries; comments due by 10-7-08; published 7-9-08 [FR 08-01423]

Elections Regarding Start-up Expenditures, Corporation Organizational Expenditures and Partnership Organizational Expenses; comments due by 10-6-08; published 7-8-08 [FR E8-15457]

Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans; comments due by 10-8-08; published 7-10-08 [FR E8-15740]

TREASURY DEPARTMENT

Electronic Payment and Refund of Quarterly Harbor Maintenance Fees; comments due by 10-6-08; published 8-5-08 [FR E8-17967]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 3406/P.L. 110–325

ADA Amendments Act of 2008 (Sept. 25, 2008; 122 Stat. 3553)

Last List September 26, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.