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WHEN: Tuesday, October 28, 2008
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WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Federal Register

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

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2008-0103]

Privacy Act of 1974: Implementation of Exemptions; Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS) of Records

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 "Immigration and Customs Enforcement Student and Exchange Visitor Information System" (SEVIS) from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the SEVIS 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 October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, e-mail: ICEPrivacy@dhs.gov, or Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. 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**, 70 FR 14427, Mar. 22, 2005, 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 ICE Student and Exchange Visitor Information System (SEVIS). The SEVIS system of records notice (SORN) was published concurrently in the **Federal Register**, 70 FR 14477, Mar. 22, 2005, and comments were invited on both the proposed rule and SORN. No comments were received from the public regarding either the SORN or the proposed rule. Therefore, no changes have been made to the rule or the SORN, and DHS is implementing the final rule as published.

DHS is claiming exemption from certain requirements of the Privacy Act for SEVIS. Because the purpose of the SEVIS system is to collect and maintain pertinent information on nonimmigrant students and exchange visitors and the schools and exchange visitor program sponsors that host them while in the United States in order to ensure that these individuals comply with the requirements of their admission, it is possible that the information in the record system may pertain to national security or law enforcement matters. In such cases, allowing access to such information could alert the subject of the information to an investigation of an actual or potential criminal, civil, or regulatory violation and reveal investigative interest on the part of DHS or another agency. Disclosure of the information would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the information would also permit the individual, who is the subject of a record, to impede the investigation and avoid detection or apprehension, which undermines the entire system. This exemption is a standard law enforcement and national security exemption utilized by numerous law enforcement and intelligence agencies.

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.

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 civil or 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 10 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

10. DHS–ICE–001, The Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS) collects and maintains pertinent information on nonimmigrant students and exchange visitors and the schools and exchange visitor program sponsors that host them while in the United States. The system permits DHS to monitor compliance by these individuals with the terms of their admission into the United States. Pursuant to exemptions (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act,

portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I). Exemptions from the particular subsections are justified, on a case by case basis, to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation, of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation, of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because portions of this system are exempt from the access provisions of subsection (d).

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25000 Filed 10–22–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0104]

Privacy Act of 1974: Implementation of Exemptions; Immigration and Customs Enforcement (ICE) General Counsel Electronic Management System (GEMS)

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 “Immigration and Customs Enforcement General Counsel Electronic Management System” (GEMS) from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the GEMS 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 October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, e-mail: ICEPrivacy@dhs.gov, or Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. 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**, 71 FR 16519, April 3, 2006, 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 ICE General Counsel Electronic Management System (GEMS). The GEMS system of records notice (SORN) was published in the **Federal Register**, 71 FR 16326, March 31, 2006. Comments were invited on both the proposed rule and SORN. No comments were received from the public regarding either the SORN or the proposed rule. Therefore, no changes have been made to the rule or the SORN, and DHS is implementing the final rule as published.

DHS is claiming exemption from certain requirements of the Privacy Act

for GEMS because the system will consist of information that is created or acquired and used by ICE attorneys working on the preparation and presentation of cases for a court or adjudicative body before which ICE or DHS is authorized or required to appear. Attorneys for the Department of Justice will also be able to access the system if they have a need for the information in the performance of their official duties.

ICE attorneys work closely with investigators throughout the process of adjudicating immigration cases. ICE attorneys must have access to investigative documents and related materials in order to form their decisions about how to handle particular cases.

Additionally, ICE attorneys create attorney work product associated with immigration proceedings. The GEMS system will facilitate the collection and maintenance of materials used by ICE attorneys in immigration adjudications. It will supplement and ultimately replace the current attorney work product paper files that are primarily stored and managed in the hardcopy alien file commonly known as the "A-file."

In this final rule, DHS is exempting this system, in part, from certain provisions of the Privacy Act and adding that exemption to Appendix C to Part 5, DHS Systems of Records.

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.

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 investigations of violations of civil or criminal laws 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 11 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

11. The General Counsel Electronic Management System (GEMS) consists of records and information created or collected by attorneys for U.S. Immigration and Customs Enforcement, which will be used in the preparation and presentation of cases before a court or other adjudicative body. ICE attorneys work closely with ICE law enforcement personnel throughout the process of adjudicating immigration cases. GEMS allows ICE attorneys to store all the materials pertaining to immigration adjudications, including documents related to investigations, case notes and other hearing related information, and briefs and memoranda of law related to cases. Having this information in one system should not only facilitate the work of the ICE attorneys involved in the particular case, but also will provide a legal resource for other attorneys who are adjudicating similar cases. The system will also provide management capabilities for tracking time and effort expended in the preparation and presentation of cases. Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the

subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, which in some cases may be classified, and reveal investigative interest on the part of DHS or ICE. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation pertaining to an immigration matter, which in some cases may be classified, and prematurely reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal immigration law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement and for the protection of national security, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject of the nature or existence of an investigation, which could cause interference with the investigation, a related inquiry or other law enforcement activities, some of which may be classified.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with ICE's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) 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. E8-24996 Filed 10-22-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2005-0103]

RIN 0579-AB98

Special Need Requests Under the Plant Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our domestic quarantine regulations to establish a process by which a State or political subdivision of a State could request approval to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that are in addition to the prohibitions and restrictions imposed by the Animal and Plant Health Inspection Service. The Plant Protection Act provides that States or political subdivisions of States may make such special need requests, but there are currently no procedures in place for their submission or consideration. This action establishes a process by which States may make a special need request.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Osama El-Lissy, Director, Emergency Management, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1237; (301) 734-5459.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) gives authority to the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate

commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States, or the dissemination of a plant pest or noxious weed within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Under section 436 of the PPA (7 U.S.C. 7756), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order (1) to control a plant pest or noxious weed; (2) to eradicate a plant pest or noxious weed; or (3) to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this prohibition are when a State or political subdivision of a State imposes regulations which are consistent with and do not exceed the regulations or orders issued by the Secretary, or when the State or political subdivision of a State demonstrates to the Secretary, and the Secretary finds, that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

On April 4, 2006, we published in the **Federal Register** (71 FR 16711-16716, Docket No. APHIS-2005-0103) a proposal¹ to amend the regulations by adding a new "Subpart—Special Need Requests" (7 CFR 301.1 through 301.1-3) in which we set out procedures for the submission and handling of special need requests.

We solicited comments concerning our proposal for 60 days ending June 5, 2006. We received 17 comments by that date. They were from representatives of State agriculture departments, environmental groups, industry organizations, and private citizens. While the majority of these commenters supported the establishment of criteria for the submission of special need requests, all of the commenters expressed some reservations, which are discussed below by topic. We are

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2005-0103>.

making only minor changes in response to those comments.

Several commenters were concerned that the timeframe for APHIS to review and make a decision to grant or deny a special need request would be too long and could potentially hinder rapid response to the introduction or spread of a pest. Several of these commenters proposed their own timelines for each step in the review and decisionmaking process or suggested publishing the receipt of a special need request as an interim rule.

We disagree that the special need request process would hinder timely response to the introduction or spread of pests. The special need request process is intended as a way for States to request authorization to establish additional prohibitions or restrictions for pests that APHIS already currently regulates. There are other processes in place for responding to new pests. In addition, the review and decisionmaking process for special need requests would not be a rulemaking process, as we would not be amending the regulations to reflect our granting of a request. As stated in the proposed rule, upon receipt of a complete special need request, we would publish a notice in the **Federal Register** announcing the availability for review and comment of the request along with all materials submitted in support of the request. Following the comment period, we would publish another notice advising the public of the Administrator's decision to either grant or deny the special need request based upon his or her review and evaluation of the information submitted in support of the request and of any comments received. If a special need request is time sensitive, the State making the request should give APHIS an idea of its urgency so that we may prioritize our review and decisionmaking regarding that request.

One commenter stated that a special need exception should automatically expire after a certain period of time unless a State can successfully demonstrate that there is a continued need for the exemption.

We agree that a special need exception may no longer be necessary after a certain period of time. Therefore, this final rule provides that a special need exception, if granted, would be applicable for 2 years, after which the State or political subdivision of a State must submit a request for renewal of the exemption. If a renewal is submitted, it would need to address the same criteria as the initial request (an updated risk analysis, survey, etc.) and would have to show that a special need still exists. The

renewal would have to be submitted no sooner than 6 months and no later than 3 months prior to the end of the 2-year applicability period for the initial exception. Once we have received a request for a renewal, we would follow the same notice and comment process we used for the initial granting of the special need exception. If, by the end of the 2-year applicability period, the State or political subdivision of a State does not submit a renewal, the State or political subdivision of a State's special need exception will lapse and the State or political subdivision of a State will have to reapply for the special need exception.

Several commenters were concerned about the process used in circumstances where there may be insufficient data regarding the pest potential of a specific species or expressed concern regarding the burden on States to answer the criteria for the special need request comprehensively, particularly with respect to the cost of surveys. Several commenters suggested that, similar to the process used by the World Trade Organization (WTO), a State or political subdivision of a State be allowed to adopt temporary restrictions until APHIS has had time to evaluate whether such restrictions are valid.

As stated above, the special need request process is intended as a way for States to request additional prohibitions or restrictions for pests that APHIS already currently regulates. Therefore, we would expect that only in rare instances would there not be sufficient data present about a certain pest. We will take lack of data into account in such instances. With respect to temporary restrictions, the PPA requires that special need exceptions be based on sound scientific data or a thorough risk assessment; therefore we do not believe that special need exceptions should be granted until a full review of the available data has been conducted.

Several commenters requested clarification or definitions of terms used within the rule, such as "special need," "sound scientific data," and "risk assessment." Several commenters also asked for specific criteria regarding the type of data we would accept in consideration of a special need request or whether both "sound scientific data" and a "thorough risk assessment" are needed to make a special need request. Some commenters suggested that it would be helpful to adopt the definitions and standards used by international organizations such as the WTO, the International Plant Protection Convention (IPPC), or the Food and Agriculture Organization.

These terms are drawn from the text of the Plant Protection Act ("* * * a State demonstrates to the Secretary, and the Secretary finds, that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment"), and we do not consider them to have any specialized meaning beyond their commonly understood meanings. Section 301.1–2 of the regulations clearly outlines the type of information required for consideration of a special need request and provides for the submission of risk analyses or other scientific data in support of a special need request.

Another commenter asked whether States may petition USDA to conduct risk assessments or whether States would be required to conduct their own assessments.

We believe that States would be in a better position to come up with the information required under § 301.1–2 than APHIS, as they would be more aware of the special circumstances that led them to apply for additional measures. However, given that special need requests only apply to pests that APHIS is already currently regulating, we welcome, and will accommodate, requests from States for any information we have gathered on such pests.

Two commenters expressed concern that the proposed rule promotes economic protectionism by allowing States to restrict interstate movement in order to protect a specific crop or commodity.

We disagree that the proposed rule promotes economic protectionism. Our process for deciding to either grant or deny a special need request will be determined exclusively on the basis of the best available science and the need to take the least restrictive action. In addition, the decision to grant or deny a special need request will be based on several specific criteria and each of those criteria will need to be satisfied through the presentation of compelling, science-based evidence. However, we have revised our criteria in order to clarify that we will not grant a special need request based solely on economic factors.

Another commenter suggested that, in the event of the withdrawal of a special need exception, the special need exception be continued through the comment period and up to and until a withdrawal decision by the Administrator.

As stated in § 301.1–3(d), if the Administrator determines that there is the need for the withdrawal of a special need exception before the renewal date of the exception, APHIS will publish a

notice in the **Federal Register** to inform the public of the withdrawal and to make the information supporting the withdrawal available for review and public comment for at least 60 days. A withdrawal of a special need exception will not come into effect until the close of the comment period and evaluation of all comments received, after which APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception.

One commenter was concerned that a special need request involving a potentially weedy plant might be rejected by APHIS on the grounds that the plant is "present" in a State or political subdivision of a State, when in fact the plant is present only in nursery or garden settings.

Our policies for determining when a weed is considered to be "present" are consistent with IPPC guidelines, specifically International Standards for Phytosanitary Measures No. 8, "Determination of Pest Status in an Area". We do not envision circumstances under which we would cite the mere presence of a plant in a nursery or garden setting as grounds for denying a special need request.

One commenter expressed concern that States may not be aware of what they may regulate and when and suggested that we state what States may regulate with respect to species that are and are not subject to a domestic quarantine.

We believe that the PPA adequately describes the powers of States with respect to interstate movement. As noted, States may regulate any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if their regulations are consistent with or do not exceed the regulations or orders issued by APHIS or when there are no Federal regulations in place for any such plant, plant product, biological control organism, noxious weed, article, or means of conveyance.

Several commenters stated that special need requests should not be limited to States, and that political subdivisions of States should be able to make special need requests independently from States.

We believe that political subdivisions of States might not have the resources to submit special need requests on their own and we also do not want to usurp the power of the States. In addition, we wish to clarify that Tribes may make special need requests independent from States as they are considered to be sovereign nations.

One commenter suggested that States that have violated Federal regulations by imposing prohibitions or restrictions on interstate movement that are in addition to current APHIS prohibitions or restrictions should be excluded from making special need requests.

We do not believe that the commenter's suggestion is appropriate. Instances of States acting contrary to the PPA have been very rare. In addition, prohibiting States that have acted contrary to Federal regulations from ever making special need requests may prevent us from granting legitimate special need requests and thus impair our ability to protect American agriculture.

One commenter stated that a special need request should only be made when a State can demonstrate that there is something "truly so unusual within the State" and "that APHIS is incapable of regulating for that risk". Further, the commenter stated that a special need request should not be used as a way to appeal regulations that a State does not agree with. Two other commenters stated that the granting of a special need request should be rare.

We agree with the commenters that the special need request process is not meant as an appeals process for APHIS regulations. Our granting of a special need request will be based upon the soundness of the scientific evidence provided by the State in support of its request; special need requests may be granted frequently or infrequently depending on that evidence.

Several commenters asked that we outline who it is in APHIS that will be reviewing the special need requests.

Appropriate and knowledgeable reviewers will be selected based on the nature and scope of the request. We employ experts for each pest that we regulate in both the field and at our headquarters who are involved on a daily basis in the running of the regulatory program. We expect that these experts, along with other experts as needed, would be reviewing material submitted in support of special need requests.

One commenter suggested that States should demonstrate that the protection requested in their special need request would not come at the expense of neighboring States or political subdivisions. A second commenter was concerned by this suggestion, stating that a State or political subdivision is inherently unable to provide data or information on behalf of another State or political subdivision.

We agree that States or political subdivisions of States should be mindful of neighboring States when

developing their own special need requests. However, we would not require States to provide specific data showing that their special need request would not negatively impact other States or political subdivisions. Such considerations will be taken into account during review of a special need request. States may also collaborate with other States in submitting multi-State special need requests. However, the special need request must include sufficient, detailed information to allow APHIS to evaluate and make a determination to either grant or deny the special need request for each State on an individual basis. In order to explicitly provide for multi-State special need requests, we are adding this information to the introductory text of proposed § 301.1–2(a).

Several commenters questioned whether a special need request would be applicable to a pathway rather than to just individual pests.

As stated in the proposed rule, the PPA gives authority to the Secretary of Agriculture to prohibit or restrict, among other things, the importation, entry, exportation, or movement in interstate commerce of any article or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States, or the dissemination of a plant pest or noxious weed within the United States. We believe that the special need criteria allow for flexibility in what a State considers to be a factor that makes it "particularly vulnerable" by allowing States to provide information regarding "any other special basis for the request for additional restrictions or prohibitions."

One commenter suggested that proposed § 301.1–2(a)(4) be changed to include contiguous borders with an area infested with a pest as a circumstance that renders a State "particularly vulnerable."

We do not believe it is necessary to change proposed § 301.1–2(a)(4) as suggested because States will have the opportunity to include such information in their responses to the criteria in paragraphs (a)(1) and (a)(2) of that section.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has

been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule amends our domestic quarantine regulations to establish a process by which a State or political subdivision of a State could request approval to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that are in addition to the prohibitions and restrictions imposed by APHIS. The PPA provides that States or political subdivisions of States may make such special need requests. This action establishes a process by which States may make a special need request.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic affects of this final rule on small entities, as required under 5 U.S.C. 604. The economic analysis is set forth below.

Expected Benefits

The principal benefit for entities in a special need area would be the pest risk reduction attributable to the action. The risk of entry and establishment of a pest of concern with and without the granting of a special need request would need to be estimated before the benefit of the reduced risk could be determined. However, the risk of a pest of concern entering and becoming established in an area may be difficult to estimate.

Other possible benefits of a special need request would be easier to calculate. Reduced pest risk due to additional restrictions or prohibitions may mean that certain mitigation measures in the special need area would no longer be considered necessary. There may be less need for inspections, special permits, certain pesticide applications, special handling or packaging, or other safeguards practiced or required prior to the granting of the special need request. Costs forgone once the request has been granted would represent benefits of the action.

Agricultural and other entities in a special need area may also benefit from the reduced availability of articles restricted or prohibited because of the special need request. Restricted supplies from sources outside the special need area could create increased market opportunities for suppliers within the area. If quantities normally purchased could not be provided by suppliers within the special need area (or from outside sources that do not present a pest risk), then suppliers likely would benefit from an increase in price.

Expected Costs

Costs would be incurred both in the special need area and in the area placed under additional restrictions or prohibitions. In each case, the size of the impact would depend upon the volume of supply affected by a special need request. As just described, prices in a special need area may increase if the available quantity of an article is reduced because of restrictions or prohibitions. But gains for suppliers within the special need area from price increases would come at the expense of the area's consumers, and overall there would be a net loss in social welfare. Losses may be incurred not only by end-users, but also by intermediary entities. Stores selling the restricted articles (nurseries, landscaping companies, grocery stores) may face declining demand, depending upon the response of consumers to the price increase, and reduced net revenues.

For the area placed under additional restrictions or prohibitions because of a special need request, sales of affected articles may decline if other replacement markets are not found. Even if shipments to the special need area can be maintained, additional costs may be incurred. For example:

- Growers may be required to have inspections conducted more frequently than APHIS would otherwise require (a cost that may be borne by the State or political subdivision).
- Growers (or the State or political subdivision) may be required to pay for special phytosanitary certificates or permits.
- Growers may incur costs related to additional risk mitigations, such as particular pesticide applications or treatments, netting, or special greenhouse equipment.
- Additional inspections or restrictions may result in shipping delays.
- Shipping companies may experience reduced business or may face additional costs related to container or sealing requirements of the special need request.

Expected Net Effects

The overriding benefit for an area granted a special need request would be the reduced risk of pest entry and establishment. Other market-related benefits are likely to be outweighed by costs incurred in the special need area and in the area placed under additional restrictions or prohibitions. Costs, including those associated with additional risk mitigation requirements, may be borne by agricultural entities, the public sector, or, most likely, a combination of the two.

Final Regulatory Flexibility Analysis

Need for and objectives of the rule. Section 436(b) of the Plant Protection Act requires that a State demonstrate to the Secretary that it has a special need for additional restrictions or prohibitions, that the Secretary agree that there is a special need, and that the additional restrictions and prohibitions requested by the State be based on sound scientific data or a thorough risk assessment. This rule establishes specific criteria by which a special need request from a State will be evaluated.

The desirability of specific criteria for evaluating special need requests has become apparent from requests received by the Agency from several States for additional restrictions or prohibitions on the interstate movement of articles that would be more restrictive than those currently imposed, for example, by the *Phytophthora ramorum* regulations in 7 CFR 301.92 through 301.92-12.

Summary of significant issues raised in public comment in response to the initial regulatory flexibility analysis and any changes made in the proposed rule as a result of such comments. APHIS did not receive any comments regarding the initial regulatory flexibility analysis for the proposed rule.

Small entities that may be affected. Agricultural and other entities would not be affected by this rule, per se, but rather by the special need requests that follow. This rule simply establishes a process by which States may make a special need request and provide the Agency with a specific set of evaluation criteria.

U.S. agricultural businesses are predominantly small entities. At all stages of economic activity—production, transportation, processing, and wholesale and retail sales—agricultural industries are generally composed of a large number of small firms and a small number of large firms (with the latter usually generating the major share of industry revenue). Given this prevailing pattern, any impacts that special need requests may have on agricultural businesses can be expected generally to affect a large if not substantial number of small entities. The number of affected small entities would vary by request, and would depend on the particular circumstances in the affected States or political subdivisions.

Reporting, recordkeeping and other compliance requirements. This rule contains various recordkeeping and reporting requirements. These requirements were described in the proposed rule under the heading

“Paperwork Reduction Act” and have been approved by the Office of Management and Budget. (See the “Paperwork Reduction Act” section below.)

We expect that costs related to preparing a special need request would be borne by the public sector, but it is possible that agricultural industries (and therefore small entities) could incur indirect costs depending on arrangements for generating the required information. Also, the Regulatory Flexibility Act’s definition of small entities includes small governmental jurisdictions, that is, “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Thus, it is possible that special need areas could correspond to or include small governmental jurisdictions.

Of greater impact than costs associated with the preparation of a request will be the costs and benefits of complying with the additional restrictions or prohibitions, once a special need request is granted by the Agency. Types of benefits and costs that may result from a special need request are identified at the beginning of this document.

A description of the steps the agency has taken to minimize any significant economic impact on small entities, and reasons for selecting the alternative adopted in the final rule. This rule establishes a set of criteria for APHIS to use in evaluating special need requests submitted by special need areas. In and of itself, this rule does not impact entities, large or small. Alternatives to this rule would be to either leave the regulations unchanged, or to require a different set of criteria than is proposed. Leaving the regulations unchanged would be unsatisfactory for the public and for APHIS. The evaluation process for special need requests is currently not as effective as it might be due to the lack of an explicit set of criteria that States and political subdivisions are required to address in applying for a special need exception. The criteria adopted by this rule will provide, we believe, well-defined, scientifically rigorous basis for the submission and evaluation of special need requests pursuant to the requirements of the PPA.

APHIS considers the criteria to be fully sufficient for evaluation purposes. We reiterate that this final rule, in itself, would not affect small entities, but rather would influence future actions—granting of special need requests—that may affect small entities.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0291.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS’ Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new “Subpart—Special Need Requests,” §§ 301.1 through 301.1–3, to read as follows:

Subpart—Special Need Requests

Sec.

301.1 Purpose and scope.

301.1–1 Definitions.

301.1–2 Criteria for special need requests.

301.1–3 Action on special need requests.

Subpart—Special Need Requests

§ 301.1 Purpose and scope.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary, or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) The regulations in this subpart provide for the submission and consideration of special need requests when a State or a political subdivision of a State seeks to impose prohibitions or restrictions on the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by this part or by a Federal Order.

§ 301.1–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Biological control organism. Any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

Interstate commerce. Trade, traffic, or other commerce

(1) From one State into or through any other State or

(2) Within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment.

Plant pest. Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.1–2 Criteria for special need requests.

(a) A special need request, as described in § 301.1, may be generated by a State or a political subdivision of a State. If the request is generated by a political subdivision of a State, the request must be submitted to APHIS through the State. States may also collaborate with other States to submit multi-State special need requests. However, if submitted, the multi-State special need request must include information in sufficient detail to allow APHIS to analyze the impacts on each State on an individual basis. All special need requests must be signed by the executive official or officials or by a plant protection official or officials of the State(s) making the request and must contain the following:

(1) Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;

(2) If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State

or political subdivision and become established;

(3) Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment or agricultural resources in the State or political subdivision. The request should contain detailed information, including quantitative estimates, if available, about what harm or injury would result from the introduction or dissemination of the biological control organism, noxious weed, or plant pest in the State or political subdivision;

(4) Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and

(5) Information detailing the proposed additional prohibitions or restrictions and scientific data demonstrating that the proposed additional prohibitions or restrictions are necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction or spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

(b) All special need requests must be submitted to the Deputy Administrator for Plant Protection and Quarantine, APHIS, USDA, Jamie L. Whitten Federal Building, 14th Street and Independence Avenue, SW., Room 301–E, Washington, DC 20250.

§ 301.1–3 Action on special need requests.

(a) Upon receipt of a complete special need request submitted in accordance with § 301.1–2, APHIS will publish a notice in the **Federal Register** to inform the public of the special need request and to make the request and its supporting information available for review and comment for at least 60 days.

(b) Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either grant or deny the special need request. The Administrator's determination will be based upon the evaluation of the information submitted by the State or political subdivision of a State in support of its request and would take into account any comments received.

(1) If the Administrator grants the special need request, the State or political subdivision of a State will be

authorized to impose only the specific prohibitions or restrictions identified in the request and approved by APHIS. APHIS will coordinate with the State, or with the State on behalf of the political subdivision of the State, to ensure that the additional prohibitions or restrictions are in accord with the special need exception granted by the Administrator.

(2) If the Administrator denies the special need request, the State or political subdivision of a State will be notified in writing of the reason for the denial and may submit any additional information the State or political subdivision of a State may have in order to request a reconsideration.

(c) If granted, a special need exception will be applicable for 2 years, at the end of which the State or political subdivision of a State must submit a request for renewal of the exception. A special need renewal request must address the same criteria as the initial request submitted under § 301.1–2 and must show that a special need still exists that warrants the continuation of the special need exception. The renewal must be submitted no sooner than 6 months and no later than 3 months prior to the end of the 2-year applicability period for the initial exception. Once a special need renewal request has been received, APHIS will follow the same notice and comment process outlined in paragraphs (a) and (b) of this section. If, by the end of the 2-year applicability period, the State or political subdivision of a State does not submit a special need renewal request, the State's or political subdivision's special need exception will lapse and the State or political subdivision of a State will have to reapply for the special need exception.

(d) If the Administrator determines that there is a need for the withdrawal of a special need exception before the renewal date of the special need exception, the reasons for the withdrawal would be communicated to the State or to the political subdivision of the State and APHIS will publish a notice in the **Federal Register** to inform the public of the withdrawal of the special need exception and to make the information supporting the withdrawal available for review and comment for at least 60 days. Reasons for withdrawal of approval of a special need exception may include, but are not limited to, the availability of new scientific data or changes in APHIS regulations.

Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception. The Administrator's determination will be

based upon the evaluation of the information submitted in support of the withdrawal and would take into account any comments received.

(Approved by the Office of Management and Budget under control number 0579-0291)

Done in Washington, DC, this 17th day of October 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8-25291 Filed 10-22-08; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA74

Appliance Labeling Rule

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Final rule; correction.

SUMMARY: The Commission is issuing this Notice to make technical corrections to the Appliance Labeling Rule. The corrections are necessary to ensure that amendatory language published on December 28, 2006 and scheduled to become effective on January 1, 2009 is consistent with other Rule amendments that have been codified since 2006 and are already effective.

DATES: The corrections published in this document will become effective on January 1, 2009.

ADDRESSES: Requests for copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Over the last two years, the Commission has issued amendments to its Appliance Labeling Rule (16 CFR Part 305) in three separate proceedings related to: (1) ceiling fan labels (71 FR 78064 (Dec. 28, 2006)), (2) appliance label designs (72 FR 49948 (Aug. 29, 2007)), and (3) metal halide lamp

fixtures (73 FR 39221 (July 9, 2008)). The effective dates of these three sets of amendments differ. The label design amendments became effective on February 29, 2008 while the ceiling fan and metal halide amendments will both become effective on January 1, 2009. Because the publication of the ceiling fan amendments preceded the label design amendments, the amendatory instructions in the ceiling fan **Federal Register** Notice are not consistent with the existing Rule provisions. For example, the label design amendments created new section numbers and whole provisions that were not extant at the time the ceiling fan amendments were published. Therefore, the citations for the ceiling fan amendments are no longer accurate. To harmonize the various amendments, the Commission is consolidating the ceiling fan and metal halide amendments in a format consistent with the Rule’s current provisions. The corrections included in this Notice contain no substantive changes to these previously announced Rule amendments.¹

II. Administrative Procedure Act

The amendments published in this notice involve technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely ensure that previously announced amendatory instructions are consistent with current Rule provisions. They contain no substantive changes to amendments previously announced by the Commission. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603-604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely change the format

¹ In addition to these conforming changes necessary to harmonize the amendments, this Notice contains three non-substantive changes. First, section 305.20 has been changed to clarify that the catalog disclosure requirements in section 305.20(a) do not apply to ceiling fans (instead, section 305.20(f) contains the catalog requirements for ceiling fans). Second, this Notice places the ceiling fan labeling requirements in a new section (305.13 Labeling for ceiling fans). Third, in the sample ceiling fan label in Appendix L, the airflow efficiency number has been corrected to match the airflow and electricity use numbers on that label.

and citations for previously announced amendments. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute “information collection requirements” as defined by 5 CFR 1320.7, the regulation that implements the Paperwork Reduction Act.² The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (“OMB”) and assigned OMB Control No. 3084-0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until May 31, 2011. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR Part 305 as amended at 71 FR 78064, December 28, 2006 and 73 FR 39221, July 9, 2008, as follows:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Section 305.2 is amended as follows:

■ a. Revise paragraphs (l)(21) and (l)(22) and add paragraph (l)(23); and

■ b. Revise paragraph (p).

■ The addition and revisions read as follows:

§ 305.2 Definitions.

* * * * *

(l) * * *

(21) Metal halide lamp fixtures.

(22) Ceiling fans.

(23) Any other type of consumer product that the Department of Energy

² 44 USC 3501-3520.

classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(p) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; *airflow efficiency* for ceiling fans; and, *thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

■ 3. In section 305.3, revise paragraphs (s) and (t) to read as follows:

§ 305.3 Description of covered products.

(s) *Metal halide lamp fixture* means a light fixture for general lighting application that is designed to be operated with a metal halide lamp and that is subject to and complies with Department of Energy efficiency standards issued pursuant to 42 U.S.C. 6295.

(1) *Metal halide ballast* means a ballast used to start and operate metal halide lamps.

(2) *Metal halide lamp* means a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

(t) *Ceiling fan* means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades. The requirements of this part are limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage.

■ 4. Revise § 305.5(a)(11) to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) * * *

(11) Ceiling Fans—§ 430.23.

* * *

■ 5. Revise § 305.7(l) to read as follows:

§ 305.7 Determinations of capacity.

* * *

(l) *Ceiling fans*. The capacity shall be the airflow in cubic feet per minute as determined according to appendix U of 10 CFR part 430, subpart B.

■ 6. In § 305.8, revise paragraph (a)(1), (a)(5), and (b)(1) to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, metal halide lamp fixtures, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, ceiling fans, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the brand name; the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption, measured in accordance with § 305.5, shall be listed in the report. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market. For ceiling fans, the report shall contain the fan diameter in inches and also shall contain efficiency ratings, energy consumption, and capacity at high speed.

* * *

(5) Each manufacturer of a metal halide lamp fixture shall submit annually to the Commission a report for each basic model of metal halide lamp fixture in current production. The report shall contain the following information:

- (i) Name and address of manufacturer;
- (ii) All trade names under which the metal halide lamp fixture is marketed;
- (iii) Model number;
- (iv) Starting serial number, date code or other means of identifying the date of

manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) Type of ballast (e.g., pulse, probe, or electronic);

(vi) Nominal input voltage and frequency;

(vii) Ballast efficiency (as determined pursuant to 42 U.S.C. 6293(b)(18)); and

(viii) Lamp type and wattage (or range of wattages) with which the metal halide lamp fixture is designed to be used.

* * *

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	May 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Ceiling fans	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
Fluorescent lamps	Mar. 1
	[Stayed]
Medium Base Compact Fluorescent Lamps.	Mar. 1
	[Stayed]
Incandescent Lamps, incl. Reflector Lamps.	Mar. 1
	[Stayed]

* * *

■ 7. Revise paragraph (a) in § 305.10 to read as follows:

§ 305.10 Ranges of comparability on the required labels.

(a) *Range of Estimated Annual Operating Costs or Energy Efficiency Ratings*. The range of estimated annual operating costs or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, metal halide lamp fixtures, lamps, showerheads, faucets, water closets, urinals, or ceiling fans) shall be taken from the appropriate appendix to this part in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges every five years beginning in 2012 in the **Federal Register**. When the ranges are revised, all information disseminated after 90 days following the publication of the

revision shall conform to the revised ranges. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

* * * * *

■ 8. Add § 305.13 to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) *Ceiling Fans.* (1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the principal display panel with the following information in order from top to bottom on the label:

(i) The words “ENERGY INFORMATION” shall appear at the top of the label with the words “at High Speed” directly underneath;

(ii) The product’s airflow at high speed expressed in cubic feet per minute and determined pursuant to § 305.5 of this part;

(iii) The product’s electricity usage at high speed expressed in watts and determined pursuant to § 305.5 of this part, including the phrase “excludes lights” as indicated in Ceiling Fan Label Illustration of Appendix L of this part;

(iv) The product’s airflow efficiency rating at high speed expressed in cubic feet per minute per watt and determined pursuant to § 305.5 of this part;

(v) The following statement shall appear on the label for fans fewer than 49 inches in diameter: “Compare: 36” to 48” ceiling fans have airflow efficiencies ranging from approximately 71 to 86 cubic feet per minute per watt at high speed.”;

(vi) The following statement shall appear on the label for fans 49 inches or more in diameter: “Compare: 49” to 60” ceiling fans have airflow efficiencies ranging from approximately 51 to 176 cubic feet per minute per watt at high speed.”; and

(vii) The following statements shall appear at the bottom of the label as indicated in Ceiling Fan Label Illustration of Appendix L of this part: “Money-Saving Tip: Turn off fan when leaving room.”

(2) *Label Size and Text Font.* The label shall be four inches wide and three inches high. The text font shall be Arial or another equivalent font. The text on the label shall be black with a white background. The label’s text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of this part.

(3) *Placement.* The ceiling fan label shall be printed on the principal display panel of the product’s packaging.

(4) *Additional Information:* No marks or information other than that specified

in this part shall appear on this label, except a model name, number, or similar identifying information.

(b) [Reserved]

■ 9. In § 305.15, revise paragraph (c) to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(c) *Metal halide lamp fixtures and metal halide ballasts—(1) Contents.* Metal halide ballasts contained in a metal halide lamp fixture covered by this Part shall be marked conspicuously, in color-contrasting ink, with a capital letter “E” printed within a circle. Packaging for metal halide lamp fixtures covered by this Part shall also be marked conspicuously with a capital letter “E” printed within a circle. For purposes of this section, the encircled capital letter “E” will be deemed “conspicuous,” in terms of size, if it is as large as either the manufacturer’s name or another logo, such as the “UL,” “CBM,” or “ETL” logos, whichever is larger, that appears on the metal halide ballast, or the packaging for the metal halide lamp fixture, whichever is applicable for purposes of labeling.

(2) *Product Labeling.* The encircled capital letter “E” on metal halide ballasts must appear conspicuously, in color-contrasting ink (*i.e.*, in a color that contrasts with the background on which the encircled capital letter “E” is placed) on the surface that is normally labeled. It may be printed on the label that normally appears on the metal halide ballast, printed on a separate label, or stamped indelibly on the surface of the metal halide ballast.

(3) *Package Labeling.* For purposes of labeling under this section, packaging for metal halide lamp fixtures consists of the plastic sheeting, or “shrink-wrap,” covering pallet loads of metal halide lamp fixtures as well as any containers in which such metal halide lamp fixtures are marketed individually or in small numbers. The encircled capital letter “E” on packages containing metal halide lamp fixtures must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital letter “E” may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads containing metal halide lamp fixtures, the encircled capital letter “E” must appear

conspicuously, in color-contrasting ink, on the plastic sheeting, unless clear plastic sheeting is used and the encircled capital letter “E” is legible underneath this packaging.

■ 10. Section 305.20 is amended as follows:

■ a. In paragraph (a) of § 305.20, add the phrase “ceiling fan,” after the word “except.”

■ b. Revise paragraph (e) and add a new paragraph (f) to read as follows:

§ 305.20 Paper catalogs and websites.

* * * * *

(e) Any manufacturer, distributor, retailer, or private labeler who advertises metal halide lamp fixtures manufactured on or after January 1, 2009 in a catalog prepared after July 1, 2009, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such metal halide lamp fixture, a capital letter “E” printed within a circle.

(f) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a ceiling fan in a catalog, from which it may be purchased, shall disclose clearly and conspicuously in such catalog, on each page that lists the covered product, all the information concerning the product required by § 305.13(a)(1).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–25225 Filed 10–22–08; 8:45 am]

[BILLING CODE: 6750–01–S]

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 616

RIN 1205–AB51

Federal-State Unemployment Compensation (UC) Program; Interstate Arrangement for Combining Employment and Wages; Final Rule

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department) is issuing this final rule to amend its regulations governing combined-wage claims filed under the Federal-State Unemployment Compensation (UC) program. Most significantly, this final rule amends the definition of “paying State.”

DATES: *Effective Date:* This final rule is effective January 6, 2009.

FOR FURTHER INFORMATION, CONTACT: Stephanie Garcia, Team Leader, State and Federal Programs Team, Division of UI Operations, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210; (202) 693-3207 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2007, the Department published a notice of proposed rulemaking (NPRM) to amend the definition of “paying State” for purposes of combined-wage claims (CWCs) filed under the Federal-State UC program. (72 FR 62145, Nov. 2, 2007) The Department invited comments through January 2, 2008.

II. General Discussion of the Rulemaking

Section 3304(a)(9)(B) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(9)(B)) requires each State, as a condition of participation in the Federal-State UC program, to participate in any arrangement specified by the Secretary of Labor (Secretary) for payment of UC on the basis of combining an individual’s employment and wages in two or more States. A claim filed under this arrangement is a CWC. Rules implementing this arrangement are found at 20 CFR part 616.

As explained in § 616.1, the purpose of the arrangement is to permit an unemployed worker with covered employment or wages in more than one State to combine all such employment and wages in one State, in order to qualify for benefits or to receive more benefits. Section 616.2 explains that, in accordance with section 3304(a)(9)(B), the arrangement was developed in consultation with the representative of the State UC agencies, currently known as the National Association of State Workforce Agencies (NASWA).

The arrangement provides, at § 616.7(a), that any unemployed individual who had employment covered under the UC law of two or more States, whether or not he or she has earned sufficient wages to qualify for UC under one or more of them, may elect to file a CWC. Under the current regulations, § 616.6(e)(1), the “paying State” is the State in which the claimant files the CWC, if he or she qualifies for benefits under the UC law of that State on the basis of combined employment and wages. Section 616.6(e)(2) identifies

the “paying State” when either the CWC claimant does not qualify for unemployment benefits under the UC law of the State in which he or she files the CWC or when the claimant files a CWC in Canada.

The NPRM proposed amending the definition in § 616.6(e) to provide that any “single State” in which the claimant had base period wages and employment, and in which the claimant qualifies for unemployment benefits, may be a “paying State.” For example, if a claimant had wages and employment in the base period(s) of State A and the base period(s) of State B, the claimant may elect either State A or State B (assuming the claimant qualifies in both States), because the “paying State” must be a “single” State. Further, no State other than State A or State B could serve as the “paying State” because the claimant did not have wages in the base period(s) of any other State. The amendment’s purpose was to prevent “forum shopping,” under which an individual may file a claim in a State with a higher weekly benefit amount (WBA) than that which exists in any of the States in which the claimant had covered employment. The amendment limits the “paying States” to those States in which CWC claimants had base period wages and employment.

The Department believes that “forum shopping” is undesirable for several reasons. First, it may unfairly advantage claimants who worked in multiple States over those who worked in just one State by affording CWC claimants the choice of filing a UC claim in a State with a higher WBA. Second, “forum shopping” results in higher costs for the claimant’s employers, because the claimant files a CWC in a State paying higher benefits, which are ultimately funded by those employers.

Moreover, “forum shopping” undermines the insurance principles of the Federal-State UC program. Under an insurance program, benefits are payable based on a specific plan. In the case of UC, benefits are payable under a State’s plan for compensating unemployment. This plan balances premiums (in the form of employer contributions) with benefit outlays (in the form of payments to individuals), requiring that benefit rights and contribution rates be coordinated. CWCs are unique in that insured wages are necessarily combined under a single State’s plan. Requiring that benefit eligibility be determined under the law of one State in which the claimant had insured base period wages conforms more closely to the insurance principles of the program.

The NPRM proposed amending § 616.7 by adding a new paragraph (f) to

require a State that denies a CWC to notify the claimant of the option of filing in another State, and proposed a conforming amendment to § 616.8(a) addressing the responsibilities of the “paying State.” The NPRM also proposed removing and reserving § 616.5, which makes December 31, 1971 the effective date of the arrangement, because it is no longer necessary.

III. Comments on the Proposed Amendments

The Department received 19 pieces of correspondence commenting on the NPRM by the close of the comment period. All were from State UC agencies. The Department considered all comments, although those that were not germane to this rulemaking are not addressed here.

Discussion of Comments

In General. Eleven commenters generally supported the proposed amendments while four opposed the proposed amendments. Four other commenters limited their comments to matters related to implementation of the new definition of “paying State” and did not express support or opposition to the proposed amendments.

Commenters favoring the proposed amendments noted the problem of “forum shopping.” In describing the extent of forum shopping, one commenter related that payments attributable to CWCs without employment in that State totaled \$41 million for the 12 months ending June 2006. Another commenter stated that the proposed amendment was an “equitable solution” to the problems created by the current rule. Commenters favoring the proposed amendment also stated that it “would simplify combined-wage claim filing” or that “the revised definition should result in a more expedited and efficient processing of CWCs.”

Conversely, commenters opposing the proposed amendment expressed concerns about an increased administrative burden and workload shifts between States. Three commenters proposed alternative amendments to the existing rule. These alternative approaches and concerns about administrative burdens are discussed below.

Alternative Approaches. One commenter proposed that the current definition of “paying State,” under which the paying State is the State in which the claimant files the claim (as long as the claimant qualifies for benefits in that State), be retained, but require also that the claimant must have

wages in that State. If the claimant did not have wages in that State, the “paying State” would be the State where the claimant was last employed in covered employment (among those States in which the claimant qualifies for UC on the basis of combining employment and wages).

This alternative approach thus has two parts: The first part makes the “paying State” a State in which the CWC claimant files the claim as long as the claimant qualifies for benefits in that State. This is similar to the NPRM’s approach, in that it requires the claimant to have wages in, as well as qualify for benefits in, the “paying State.” This first part, therefore, serves the same purpose of the NPRM to prevent forum shopping.

However, the second part of the alternative approach would require, in instances where the claimant did not have wages in the first State in which the CWC was filed, that the “paying State” be the State where the claimant was last employed. This approach, however, would unnecessarily restrict a claimant’s choice as to the “paying State.” Under the first part of the alternative approach, a claimant would be free to file a claim in, and therefore select among, any of the States in which he or she qualified for benefits and had wages. However, the claimant would lose this right if he or she had the misfortune of initially filing in a State which did not meet the definition of “paying State.” In that event, the selection of the “paying State” would default to a particular State, that is, the State of last employment, thereby eliminating any choice the claimant originally had in selecting the “paying State”. Thus, the Department declines to adopt this alternative.

Another commenter suggested that the “paying State” be either the State in which the claimant had the most recent covered employment or the most recent base period employment, regardless of where the claim was filed. This approach raises concerns because the identification of a claimant’s most recent employer may not be readily available at the time a claim is filed due to the fact that wages are often not reported until several weeks after the end of the last calendar quarter in which the claimant was employed. Moreover, if a claimant had more than one employer during that quarter, those reports will not identify which one was the claimant’s last employer during that quarter, and the claimant may not know the correct name of the last employer. The delay is even greater for CWCs that are based in whole or in part on Federal employment, as wages are not reported

by Federal employers until after a claim is filed, and thus States cannot immediately determine Federal employment and wages at the time of filing in order to make a determination of the “last employer.”

In addition, the proposed alternative fails to treat CWCs consistently with “regular” claims, because “regular” claims are based on base period wages and employment rather than the claimant’s most recent wages and employment. Moreover, the claimant’s most recent employment in a State might be only incidental, yet this definition would require the filing of a CWC in that State even though the claimant had earned considerable base period wages in one or more other States. This approach is therefore inconsistent with the insurance principles of the UC program since it permits the claimant to receive UC benefits from a State in which the claimant’s employer made incidental contributions. Thus, the Department declines to adopt this alternative.

Another commenter proposed a residency requirement for CWC claimants. As discussed above, the Department values consistency in the treatment of CWC and “regular” claimants. For a claimant with base period wages and employment in only one State, the claimant’s eligibility is determined under that State’s law, regardless of where the claimant resides. Similarly, residency should not be taken into account in a CWC. Also, determining residency is not always a simple matter. For example, establishing the residency of a claimant who recently moved from one State to another could be complex, unnecessarily delaying the payment of UC. Therefore, the Department declines the suggestion to incorporate residency into the requirements.

Accordingly, after due consideration of the comments, the final rule adopts the proposed amendment of the “paying State” definition without change.

Administrative Burden. Commenters addressing the administrative burden of the proposed amendments were concerned about proposed paragraph (f) in § 617.7, providing that if a State denies a CWC, “it must inform the claimant of the option to file in another State in which the State finds that the claimant has wages and employment.” Eleven of the 19 commenters expressed concern that State agencies would be required to provide detailed information on claim filing and research claimant options.

The commenters apparently read the word “finds” in paragraph (f) to mean that a State must issue a formal

determination listing the States in which the claimant has wages and employment. That is not correct. The purpose of proposed § 617.7(f) was to assure the notification of any claimant whose CWC was denied under one State’s law that the individual has the option to file against another State. It did not intend to require that a State make a formal finding, but merely to direct a State to inform the claimant of this option. However, to clarify this matter and eliminate any confusion, the final rule deletes the words “State finds that.”

Workload Shifts. One commenter was concerned that the proposed rule would shift CWC workload from one State to another, which would shift the amount of funding provided by the Department for State UC administration. Another commenter was also concerned about workload increases.

CWCs are generally not a large part of the UC claims workload and, as a result, workload shifts likely would be minimal and have little effect on administrative funding. For example, in calendar year 2007, only about 4 percent of initial claims were CWCs. Moreover, the Department believes that any rule related to claimant eligibility should be based on fair and equitable treatment of claimants, and not be influenced by incidental workload shifts. The proposed rule would achieve this fair and equitable treatment by allowing the claimant to choose to file in any State in which the claimant qualified for unemployment benefits based upon insured base period wages and employment in that State. Accordingly, the final rule is adopted as proposed.

Another commenter noted that State Information Technology (IT) systems would require re-programming in order to add an advisement to claimants who are denied CWCs of the possibility of filing against another State. Although the amendment may require a relatively minor change(s) to a State’s IT system this is a one time change that is within the scope of States’ customary updates to claim filing systems and does not impose additional workload responsibilities on State agencies.

Implementation and other Administrative Issues. Several commenters raised questions related to the implementation and the timing of implementation. The Department believes that specific procedural guidance for implementation is best addressed through program letters and similar guidance. The Department plans to issue this guidance immediately after publication of the final rule.

The Department recognizes the significance of the questions related to

implementation. All States must convert to the new definition of “paying State” at the same time; failure to achieve this would be confusing and unfair to claimants and the employers who bear the benefit costs and would create additional implementation issues. To assure that all States have adequate time to address operational issues, including training new staff, the final rule will be effective January 6, 2009.

Some commenters also expressed concerns over more long-range implementation issues. Several expressed concern that not all wages are reported by employers in a correct or timely fashion to State UC agencies. These commenters emphasized the importance of cooperation and participation among all States to ensure that timely information is available. The Department agrees and will facilitate such efforts through procedural guidance and ongoing training efforts.

Technical Changes. We did not receive comments addressing the deletion as unnecessary of § 616.5, which makes December 31, 1971, the effective date of the arrangement. Nor were there any comments about a conforming amendment to § 616.8(a), which eliminates language deemed irrelevant in light of the new definition of “paying State” because it addressed a scenario in which a State issues CWC determinations, even if the claimant had no covered wages in the “paying State.” These amendments are included in the final rule.

One commenter noted language in § 616.8(a), which mentions “wages in the paying State, if any.” The final rule deletes the words “if any” because, under the new definition of “paying State,” there must always be wages in the paying State.

Lastly, the proposed rule solicited comments on the desirability of amending any of the provisions of Part 616, because the CWC arrangement has been in existence for over thirty-five years without change to its basic structure. We received no comments. Accordingly, we have made no amendments other than those described above.

IV. Administrative Provisions

Executive Order 12866—Regulatory Planning and Review

The Department has determined that this final rule is not economically significant. Under Executive Order 12866, a rule is economically significant if it materially alters the budgetary impact of entitlements, grants, user fees, or loan programs; has an annual effect on the economy of \$100 million or

more; or adversely affects the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. The Department has determined that this rule is not economically significant under this Executive Order because it will not have an economic impact of \$100 million or more on the State agencies or the economy. The Department has consulted with the Office of Management and Budget (OMB) on this final rule. Based on their analysis, OMB has deemed that this rule is not a significant action under Executive Order 12866, therefore the Department is not required to submit the final rule to OMB for approval.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), the Department of Labor is required to submit any information collection requirements to the Office of Management and Budget (OMB) for review and approval (44 U.S.C. 3501 *et seq.*). As it does not impose any new requirements or modifications of existing requirements on the States that have not already been approved by OMB for collection, the Department has determined that this final rule does not contain new information collection requiring it to submit a paperwork package to OMB.

Executive Order 13132: Federalism

Executive Order 13132 at section 6 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

Further, section 3304(a)(9)(B) of FUTA requires consultation with the State agencies in developing the CWC arrangement. Section 616.2 of the CWC regulations also provides that for purposes of “such consultation in its formulation and any future amendment the Secretary recognizes, as agents of the State agencies, the duly designated representatives of the National Association of State Workforce Agencies (NASWA).”

Consultation has occurred on an informal basis with the States through

NASWA. The Department consulted with the UC Committee and other representatives of the States selected by the NASWA, during the 60-day comment period for this proposed rule.

Unfunded Mandates Reform Act

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Under the Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The Department has determined that this final rule does not create any unfunded mandates because it will not significantly increase aggregate costs of the CWC arrangement, as these changes are considered to be within the scope of States’ customary updates to claim filing systems. The effect of this final rule is to preclude “forum shopping” and tie UC eligibility more closely to the insurance principle of the Federal-State UC program, and it does not create additional entitlements.

Assessment of Federal Regulations and Policies on Families

The final rule does not have an impact on the autonomy or integrity of the family as an institution, as it is described under section 654 of the Treasury and General Government Appropriations Act. We have assessed that while there may be costs associated with the rule, they are not of a magnitude to adversely affect family well-being. This provision protects the stability of family life, including marital relationships, financial status of families, and parental rights.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Act

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification according to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule “will not * * * have a significant economic impact on a substantial number of small entities” (5 U.S.C. 605(b)). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction (5 U.S.C. 601(3)–(5)). Therefore, the definition of the term “small entity” does not include States.

This rule describes procedures governing State administration of the CWC arrangement under the Federal-State UC program, which does not extend to small governmental jurisdictions. Therefore, the Department certifies that this final rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

In addition, the Department certifies that this rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Under section 804 of SBREFA, a major rule is one that is an "economically significant regulatory action" within the meaning of Executive Order 12866. Because this final rule is not an economically significant rule under Executive Order 12866, the Department certifies that it also is not a major rule under SBREFA.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This NPRM addresses UC, a program for unemployed workers, and has no impact on safety or health risks to children.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have "tribal implications." Required actions include consulting with tribal governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having "tribal implications" when they have substantial direct effects 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.

The Department has reviewed this NPRM and concludes that it does not have tribal implications. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and tribal governments. Accordingly, we conclude that this rule does not have tribal

implications for the purposes of Executive Order 13175.

Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

The final rule does not impose limitations on private property use as described under Executive Order 12630, Governmental Actions and the Interference with Constitutionality Protected Property Rights. It does not propose or implement licensing, permitting or other condition requirements on the use thereof, nor require dedications or exactions from owners of private property. Accordingly, we have determined this rule does not have takings implications.

Executive Order 12988—Civil Justice

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 616

Unemployment compensation.

■ For the reasons stated in the preamble, the Department amends 20 CFR part 616 as set forth below:

PART 616—INTERSTATE ARRANGEMENT FOR COMBINING EMPLOYMENT AND WAGES

■ 1. The authority citation for 20 CFR part 616 is revised to read as follows:

Authority: 26 U.S.C. 3304(a)(9)(B); Secretary's Order No. 3–2007, Apr. 3, 2007 (72 FR 15907).

§ 616.5 [Removed]

■ 2. Remove § 616.5.

§ 616.6 [Amended]

■ 3. Revise paragraph (e) of § 616.6 to read as follows:

§ 616.6 Definitions.

* * * * *

(e) *Paying State.* A single State against which the claimant files a Combined-Wage Claim, if the claimant has wages and employment in that State's base period(s) and the claimant qualifies for unemployment benefits under the unemployment compensation law of

that State using combined wages and employment.

* * * * *

§ 616.7 [Amended]

■ 4. Add new paragraph (f) to § 616.7 of 20 CFR to read as follows:

§ 616.7 Election to file a Combined-Wage Claim.

* * * * *

(f) If a State denies a Combined-Wage Claim, it must inform the claimant of the option to file in another State in which the claimant has wages and employment during that State's base period(s).

§ 616.8 [Amended]

■ 5. In § 616.8(a) remove the words " , if any" and the words " , even if the Combined-Wage Claimant has no earnings in covered employment in that State".

* * * * *

Signed at Washington, DC, this 16th day of October 2008.

Brent R. Orrell,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. E8–25097 Filed 10–22–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. FDA–2002–N–0031] (formerly Docket No. 2002N–0273)

RIN 0910–AF46

Substances Prohibited From Use in Animal Food or Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 25, 2008 (73 FR 22720). The document amended the agency's regulations to prohibit the use of certain cattle origin materials in the food or feed of all animals to further strengthen existing safeguards against bovine spongiform encephalopathy (BSE). The document was inadvertently published with incorrect dollar amounts in two separate areas: The summary of economic impacts and the paperwork burden table. This document corrects those errors.

DATES: Effective on April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Burt Pritchett, Center for Veterinary Medicine (HFV-222), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-453-6860, e-mail: burt.pritchett@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 2008, incorrect dollar amounts were published in the document with respect to: (1) The summary of economic impacts and (2) the paperwork burden table. Regarding the economic impact of the rule, a dollar figure of \$58 million was cited as the estimated loss in annual surplus caused by import restrictions imposed on U.S. products

by other countries; the correct figure is approximately \$105 million. Regarding the paperwork burden table (Table 9), the estimated total operation and maintenance costs for annual recordkeeping was incorrectly cited as \$157,080. The estimated cost per renderer should be \$354.20, so the estimated total operation and maintenance costs for annual recordkeeping is actually \$160,275.

Therefore, in FR Doc. 08-1180, appearing on page 22720 in the **Federal Register** of Friday, April 25, 2008, the following corrections are made to the **SUPPLEMENTARY INFORMATION:**

1. On page 22737, in the first column, in the last sentence preceding the first

full paragraph, “Although we are unable to quantify the effects of this final rule on removing restrictions to foreign markets, the benefits are potentially large because the economy as a whole loses an annual surplus equal to about \$58 million from the remaining restrictions.” is corrected to read:

“Although we are unable to quantify the effects of this final rule on removing restrictions to foreign markets, the benefits are potentially large because the economy as a whole loses an annual surplus equal to about \$105 million from the remaining restrictions.”

2. On page 22753, table 9 is corrected to read:

TABLE 9.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours	Operation and Maintenance Costs
589.2001(c)(2)(vi) and (c)(3)(i)	175	1	175	20	3,500	\$61,985
589.2001(c)(2)(ii)	50	1	50	20	1,000	\$17,710
589.2001(c)(3)(i)(A)	175	1	175	26	4,550	\$80,580
Total					9,050	\$160,275

3. On page 22753, in the third column, following table 9, the second complete sentence “Therefore, FDA estimates that the cost per renderer for compliance with the new requirement for establishing and maintaining written procedures will be \$340 per renderer, hence the new figure of \$17,000 as shown in Table 9 of this document.” is corrected to read:

“Therefore, FDA estimates that the cost per renderer for compliance with the new requirement for establishing and maintaining written procedures will be \$354.20 per renderer (adjusted for inflation since the October 2005 proposed rule), hence the new figure of \$17,710 as shown in Table 9 of this document.”

Dated: October 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-25346 Filed 10-22-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9321]

RIN 1545-BE79

Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to a correcting amendment to final regulations (TD 9321) that was published in the **Federal Register** on October 7, 2008 (73 FR 58438). The final regulations relate to section 409A and nonqualified deferred compensation plans.

DATES: This correction is effective October 23, 2008.

Applicability date: April 17, 2007.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, (202) 622-3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to this document are under section 409A of the Internal Revenue Code.

Need for Correction

As published, the correcting amendment of September 24, 2008 (73 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the correcting amendment to final regulations (TD 9321), which were the subject of FR Doc. E8-23652, is corrected as follows:

1. On page 58438, column 2, in the first sentence of the “Summary” section of the preamble the language “This document contains corrections to final regulations (TD 9321) which were published in the **Federal Register** on April 17, 2007 (72 FR 19323), corrected July 31, 2007 (72 FR 41620) and September 24, 2007 (72 FR 54945).”, is corrected to read “This document contains corrections to final regulations (TD 9321) which were published in the **Federal Register** on April 17, 2007 (72 FR 19323), corrected July 31, 2007 (72 FR 41620), and September 24, 2008 (73 FR 54945).”

2. On page 58438, column 2, in the "Need for Correction" section of the preamble the language "As published, the correcting amendment of September 24, 2008 (73 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and is in need of clarification." is corrected to read "As published, the correcting amendment of September 24, 2008 (73 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and is in need of clarification."

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8-25234 Filed 10-22-08; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-8733-7]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting Minnesota Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The agency published a proposed rule on July 14, 2008 at 73 FR 40263 and provided for public comment. The public comment period ended on August 13, 2008. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: *Effective Date:* The final authorization will be effective on October 23, 2008. This approval will expire automatically if the Joint Powers Agreement (JPA) between the State of Minnesota and Hennepin County is terminated or expires without renewal.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R05-RCRA-2008-0468. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some of the 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. You may view and copy Minnesota's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886-7450; or Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Tanya Maurice (651) 297-1793.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450, e-mail westefer.gary@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 in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Minnesota final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has 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 take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of the Proposed Authorization Decision?

The effect of this decision is to allow Minnesota to implement the EPA approved JPA with Hennepin County. Hennepin County will be able to conduct an agreed number of inspections, within Hennepin County, annually on behalf of the Minnesota Pollution Control Agency (MPCA). The JPA does not affect MPCA's enforcement responsibility.

Minnesota continues to have enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, require monitoring, tests, analyses, or reports, and
- Enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because there are no new regulations or inspection requirements created by this action. Metro County authorities, including Hennepin County, are already performing inspections at RCRA facilities.

D. Proposed Rule

On July 14, 2008 (73 FR 40263), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Minnesota's hazardous waste program and opened our decision to public comment. The agency received no comments on this proposal. EPA found Minnesota's RCRA program to be satisfactory.

E. What Has Minnesota Previously Been Authorized for?

Minnesota initially received final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27169); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992,

effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994, effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774). Minnesota also received authorization for the U.S. Filter Recovery Services Project XL on May

22, 2001, effective May 22, 2001 (66 FR 28085).

F. What Changes Are We Authorizing With Today's Action?

On February 25, 2008, Minnesota submitted a final complete program revision application, seeking authorization of their changes in

accordance with 40 CFR 271.21. We have determined that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we are granting Minnesota final authorization for the following program change:

Description of state initiated change (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	State authority
Joint Powers Agreement between the Minnesota Pollution Control Agency and Hennepin County.	42 U.S.C. 6926 and 6929, 40 CFR 271.16 and 271.17.	Minnesota Statutes sections 13.02, effective 1974 as amended; 13.39, effective 1981 as amended; 115.071, effective 1973 as amended; 115.072, effective 1973 as amended; 116.07, effective 1967 as amended; 116.075, effective 1971 as amended; 471.59, effective 1943 as amended; 473.151, effective 1976 as amended; 473.811, effective 1975 as amended.

Minnesota entered into the Joint Powers Agreement under its statutes. Sections 13.02 and 13.39 of the Minnesota Statutes cover data practices. Section 13.02 includes political subdivisions such as counties as well as the State agencies. Section 13.39 provides for public access to all data except that legally classified as nonpublic. Section 115.071 provides for adequate enforcement tools including civil and criminal penalties meeting the requirements of 40 CFR 271.16. Section 115.072 allows the State agency to seek recovery of its litigation costs. Section 116.07 authorizes MPCA to adopt hazardous waste rules. Section 116.072 authorizes the issuance of Administrative Penalty Orders meeting the requirements of 40 CFR 271.16. Section 116.075 governs treatment of trade secret data as does section 473.151, which also authorizes sharing of this information to comply with Federal law as required in 40 CFR 271.17(a). Section 471.59 provides the legal basis for governmental units such as MPCA and Hennepin County to enter into a cooperative agreement. Section 473.811 provides the seven Metro Counties (including Hennepin) authority to inspect waste facilities for enforcement purposes.

G. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, there are no revisions of State regulations.

H. Who Handles Permits After the Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to implement

and issue permits for HSWA requirements for which Minnesota is not yet authorized. EPA or Minnesota may enforce compliance with those permits. There are no new permits, or alterations to existing permits created by the JPA.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:
 - a. Bois Forte Indian Reservation.
 - b. Fond Du Lac Indian Reservation.
 - c. Grand Portage Indian Reservation.
 - d. Leech Lake Indian Reservation.
 - e. Lower Sioux Indian Reservation.
 - f. Mille Lacs Indian Reservation.
 - g. Prairie Island Indian Reservation.
 - h. Red Lake Indian Reservation.
 - i. Shakopee Mdewakanton Indian Reservation.
 - j. Upper Sioux Indian Reservation.
 - k. White Earth Indian Reservation.
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a 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 in these lands.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no

requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects 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).

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This 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: October 10, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8-25315 Filed 10-22-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA-B-1011]

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 in 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.
Arizona:					
Maricopa	Town of Cave Creek (08–09–0722P).	September 17, 2008; September 24, 2008; <i>Sonoran News</i> .	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 5140 East New River Road, Cave Creek, AZ 85331.	January 22, 2009	040129
Santa Cruz	Unincorporated areas of Santa Cruz County (07–09–1052P).	September 5, 2008; September 12, 2008; <i>Nogales International</i> .	The Honorable Manny Ruiz, Chairman, Santa Cruz County, Board of Supervisors, 2150 North Congress Drive, Nogales, AZ 85621.	January 12, 2009	040090
Yavapai	Unincorporated areas of Yavapai County (08–09–1638P).	September 17, 2008; September 24, 2008; <i>Prescott Daily Courier</i> .	The Honorable Chip Davis, Chairman, Yavapai County, Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	October 6, 2008	040093
Florida: Sarasota	Unincorporated areas of Sarasota County (08–04–1962P).	September 12, 2008; September 19, 2008; <i>Sarasota Herald-Tribune</i> .	The Honorable Shannon Staub, Chair, Sarasota County Commission, 1660 Ringling Boulevard, Sarasota, FL 34236.	January 20, 2009	125144
Georgia:					
Athens-Clarke ...	Unincorporated areas of Athens-Clarke County (08–04–4142P).	September 12, 2008; September 19, 2008; <i>Athens Banner Herald</i> .	The Honorable Heidi Davison, Mayor, Athens-Clarke County, 235 Wells Drive, Athens, GA 30606.	August 29, 2008	130040
DeKalb	Unincorporated areas of DeKalb County (08–04–3686P).	September 18, 2008; September 25, 2008; <i>The Champion</i> .	The Honorable Vernon Jones, Chief Executive Officer, DeKalb County, 1300 Commerce Drive, Decatur, GA 30030.	August 29, 2008	130065
Idaho: Blaine	Unincorporated areas of Blaine County (08–10–0169P).	September 17, 2008; September 24, 2008; <i>Idaho Mountain Express</i> .	The Honorable Tom Bowman, Chairman, Blaine County Board of Commissioners, 206 First Street South, Suite 300, Hailey, ID 83333.	August 29, 2008	165167
Illinois: DuPage	Village of Lisle (08–05–3888P).	September 16, 2008; September 23, 2008; <i>Daily Herald</i> .	The Honorable Joseph Broda, Mayor, Village of Lisle, 925 Burlington Avenue, Lisle, IL 60532.	January 21, 2009	170211
New Mexico: Dona Ana.	City of Las Cruces (08–06–1760P).	September 5, 2008; September 12, 2008; <i>Las Cruces Bulletin</i> .	The Honorable Ken Miyagishima, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004.	August 25, 2008	355332
North Carolina: Orange.	Orange County (Unincorporated Areas) (08–04–1666P).	August 15, 2008; August 22, 2008; <i>Chapel Hill Herald</i> .	Mr. Barry Jacobs, Chair, Board of Commissioners, Orange County, 2105 Moorefields Road, Hillsborough, North Carolina 27278.	December 22, 2008	370342
Ohio:					
Franklin	City of Columbus (07–05–3141P).	August 21, 2008; August 28, 2008; <i>The Columbus Dispatch</i> .	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, OH 43215.	December 26, 2008	390170
Franklin	Unincorporated areas of Franklin County (07–05–3141P).	August 21, 2008; August 28, 2008; <i>The Columbus Dispatch</i> .	The Honorable Mary Jo Kilroy, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215.	December 26, 2008	390167
Franklin	City of Grove City (07–05–3141P).	August 21, 2008; August 28, 2008; <i>The Columbus Dispatch</i> .	The Honorable Richard L. Stage, Mayor, City of Grove City, 4035 Broadway Street, Grove City, OH 43123.	December 26, 2008	390173

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.
Oregon: Multnomah, Clackamas, and Washington.	City of Portland (08–10–0276P).	September 16, 2008; September 23, 2008; <i>Daily Journal of Commerce</i> .	The Honorable Tom Potter, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Suite 340, Portland, OR 97204.	January 21, 2009	410183
Texas: Bexar	City of San Antonio (07–06–2565P).	September 5, 2008; September 12, 2008; <i>San Antonio Express News</i> .	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 12, 2009	480045
Collin	Town of Prosper (08–06–0479P).	September 11, 2008; September 18, 2008; <i>Dallas Morning News</i> .	The Honorable Charles Niswanger, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	August 29, 2008	480141
Tarrant and Denton.	City of Fort Worth (08–06–2456P).	September 5, 2008; September 12, 2008; <i>Fort Worth Star-Telegram</i> .	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	August 19, 2008	480596
Johnson	City of Burleson (08–06–0660P).	August 6, 2008; August 13, 2008; <i>Burleson Star</i> .	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	December 11, 2008	485459
Tarrant	City of Euless (08–06–0770P).	April 4, 2008; April 11, 2008; <i>Colleyville Courier</i> .	The Honorable Mary Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039.	August 11, 2008	480593
Tarrant	City of Fort Worth (07–06–0534P).	September 5, 2008; September 12, 2008; <i>Fort Worth Star-Telegram</i> .	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	January 12, 2009	480596
Travis	City of Austin (08–06–1041P).	September 16, 2008; September 23, 2008; <i>Austin American-Statesman</i> .	The Honorable Will Wynn, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	January 21, 2009	480624
Washington: King	City of Burien (07–10–0686P).	September 8, 2008; September 15, 2008; <i>The Seattle Times</i> .	The Honorable Joan McGilton, Mayor, City of Burien, 15811 Ambaum Boulevard Southwest, Suite C, Burien, WA 98168.	January 13, 2009	530321

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

Dated: October 9, 2008.

Michael K. Buckley,

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

[FR Doc. E8–25265 Filed 10–22–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123 and WC Docket No. 05–196; FCC 08–210]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for waiver.

SUMMARY: In this document, the Commission grants a petition for limited waiver filed by Sorenson Communications, Inc. (Sorenson). The waiver allows Sorenson, and all other Video Relay Service (VRS) providers, prior to the implementation of new emergency call handling rules, to deliver to the appropriate emergency response authorities, at the outset of the outbound leg of an emergency VRS call, the caller's North American Numbering

Plan (NANP) callback number, when known to the provider, rather than the callback number of the Communications Assistant (CA). The Commission also reiterates its requirement that VRS providers implement a system to ensure that all incoming emergency calls (including callbacks from emergency personnel) are answered by the provider before non-emergency calls.

DATES: Effective September 19, 2008, the limited waiver shall expire as of December 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office at (800) 311–4381 (voice) or e-mail at Gregory.Hlibok@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03–123 and WC Docket No. 05–196, Order, document FCC 08–210, adopted September 15, 2008, and released September 19, 2008, granting a petition filed by Sorenson for limited waiver of interim 47 CFR 64.605(c), which was adopted by the Commission in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03–123 and WC Docket No. 05–196, Report and Order, document FCC 08–78 (*Interim Emergency Call Handling*

Order), published at 73 FR 21252, April 21, 2008. The full text of document FCC 08–210 will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 08–210 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, <http://www.bcpweb.com>, or by calling 1–800–378–3160. Document FCC 08–210 also can be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

Document FCC 08–210 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden "for small business concerns

with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Synopsis

1. In the *Interim Emergency Call Handling Order*, the Commission addressed the emergency call handling obligations of Internet-based Telecommunications Relay Services (TRS) providers. Pending adoption by the Commission of a longer term emergency call handling solution, the Commission adopted interim requirements for Internet-based TRS providers to ensure access to emergency services for consumers of Internet-based relay services. Among these interim requirements is 47 CFR 64.605(c), which requires Internet-based TRS providers, at the outset of the outbound leg of an emergency TRS call, to deliver to emergency response authorities the callback number of the TRS provider’s CA, thereby enabling emergency response personnel to re-establish contact with the CA in the event the call is disconnected. Pursuant to the subsequent *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03–123 and WC Docket No. 05–196, Report and Order and Further Notice of Proposed Rulemaking, document FCC 08–151 (*Internet-based TRS Numbering Order*), published at 73 FR 41286, July 18, 2008, as of December 31, 2008, this requirement will no longer apply and will be superseded by the new emergency call handling rules adopted in that order.

2. On July 11, 2008, Sorenson filed a petition for limited waiver of interim 47 CFR 64.605(c) seeking authority so that prior to December 31, 2008, when the caller’s NANP callback number is known, Sorenson may deliver it to the appropriate emergency response authorities at the outset of the outbound leg of an emergency VRS call, instead of providing the CA’s callback number. Because the Commission finds this to be a more efficient method of ensuring that emergency response personnel can re-establish contact with an emergency caller if the call has been disconnected, and because this approach more closely approximates the callback information that the Commission will require under its final emergency call handling rules for Internet-based forms of TRS, the Commission grants the limited waiver of interim 47 CFR 64.605(c) that is requested by Sorenson, and applies it to all VRS providers. The Commission also reiterates its requirement that VRS

providers implement a system to ensure that all incoming emergency calls (including callbacks from emergency personnel) are answered by the provider before non-emergency calls.

3. *Background.* The measures adopted in the *Interim Emergency Call Handling Order* were designed to ensure that persons using Internet-based forms of TRS can promptly access emergency services, until such time that Internet-based TRS providers can immediately and automatically place the outbound leg of an emergency call to an appropriate public safety answering point (PSAP), designated statewide default answering point, or appropriate local emergency authority (collectively EAs). The Commission required Internet-based TRS providers, at the outset of the outbound leg of an emergency call, to deliver to emergency response authorities, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA’s callback number, and the CA’s identification number, thereby enabling the emergency response authority to re-establish contact with the CA if the call is disconnected. One key provision of the *Internet-based TRS Numbering Order*, however, is to have VRS and IP Relay providers transmit the Automatic Number Identification (ANI) of the caller (*i.e.*, the callback number of the calling party) to the emergency response personnel rather than having Internet-based TRS providers transmit to emergency response personnel the callback number of the CA as required under the current interim rules.

4. In its waiver petition, Sorenson asserts that providing to emergency authorities the ten-digit NANP number of an emergency VRS caller represents a more efficient method of re-establishing contact with that caller if the initial call becomes disconnected, by enabling emergency response personnel to re-establish relayed communications directly with the caller by dialing the user’s toll-free number rather than going through the intermediate step of calling back the same CA. Sorenson contends this procedure would serve the public interest by facilitating the more rapid callback in this situation, and by “effectively implement[ing],” ahead of the December 31st deadline, the requirement set forth in the *Internet-based TRS Numbering Order* that VRS and IP Relay providers transmit the caller’s ANI, rather than the CA’s callback number, at the outset of the outbound leg of an emergency VRS call.

5. *Discussion.* The Commission finds good cause has been demonstrated to

grant Sorenson’s request for a limited waiver of interim 47 CFR 64.605(c), as well as to extend the waiver to similarly situated VRS providers. First, as Sorenson correctly notes, the Commission’s goal in adopting interim 47 CFR 64.605(c) was to ensure that emergency response personnel have a means of re-establishing contact with an Internet-based relay user whose emergency call has been disconnected. Although it was logical for the Commission in its *Interim Emergency Call Handling Order* to require providers to deliver the callback number of the CA, rather than of the user (since many VRS and IP Relay users do not yet have unique ten-digit NANP numbers and therefore cannot be reached directly by dialing a ten-digit number), where a relay user does have a unique ten-digit NANP number, such as the toll-free NANP numbers provided to Sorenson users, the Commission finds no reason why this number should not be provided to emergency response authorities at the outset of the outbound leg of an emergency call. Indeed, to the extent that a callback via a user’s ten-digit NANP number is given priority call handling and does not necessitate re-establishing contact with the specific CA who handled the original emergency call (who himself may be experiencing technical or other difficulties), the Commission agrees that the approach described by Sorenson represents a more efficient method of re-establishing contact with the emergency caller. Therefore, where an emergency caller can be reached directly via a ten-digit NANP callback number, the Commission finds that it is in the public interest to permit VRS providers to provide this number to emergency response personnel. Second, as Sorenson also notes, where an emergency VRS caller can be reached directly via a unique, ten-digit NANP number, providing this callback number to emergency response personnel more closely approximates the callback approach adopted by the Commission in the recent *Internet-based TRS Numbering Order*.

9. In sum, the Commission finds that the record supports granting all VRS providers a waiver of interim 47 CFR 64.605(c)’s requirement that the CA deliver to emergency response authorities, at the outset of the call, the CA’s callback number, to the extent that the VRS CA can deliver, instead, the VRS caller’s unique ten-digit NANP callback number. The Commission reiterates, however, its requirement that VRS providers implement a system to ensure that all incoming emergency

calls (including callbacks from emergency personnel) are answered by the provider before non-emergency calls. The Commission also recognizes that a callback from emergency personnel may be handled by a CA other than the CA who handled the initial 911 call from the emergency caller. The Commission expects providers will have in place a procedure by which they will obtain from the first CA all information relevant to the emergency, including any information that he or she obtained during the course of the initial call but that was not conveyed, and that the provider will transmit this information to the appropriate emergency personnel. Finally, because the provision of interim 47 CFR 64.605(c) waived herein terminates as of December 31, 2008, the waiver granted herein to VRS providers shall also terminate on that date.

Congressional Review Act

The Commission will not send a copy of the Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the rule subject to the limited waiver was previously adopted and subject to a CRA submission at that juncture.

Ordering Clauses

Pursuant to section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and 47 CFR 0.141, 0.361, and 1.3, the Order is adopted.

The petition for limited waiver of interim 47 CFR 64.605(c), filed by Sorenson on July 11, 2008, is granted to the extent described above and is extended to all VRS providers.

The limited waiver of interim 47 CFR 64.605(c) shall expire as of December 31, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-25192 Filed 10-22-08; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XL44

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of the 2008 yellowfin sole total allowable catch (TAC) assigned to the Bering Sea and Aleutian Islands trawl limited access sector to the Amendment 80 cooperative in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2008 total allowable catch of yellowfin sole to be fully harvested.

DATES: Effective October 20, 2008, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

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

The 2008 yellowfin sole TAC assigned to the Bering Sea and Aleutian Islands trawl limited access sector is 44,512 metric tons (mt) and to the Amendment 80 cooperative is 92,982 mt in the BSAI as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

The Administrator, Alaska Region, NMFS, has determined that 6,000 mt of the yellowfin sole TAC assigned to the BSAI trawl limited access sector will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 6,000 mt of yellowfin sole from the BSAI trawl limited access sector to the Amendment 80 cooperative in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated yellowfin sole following the procedures set forth in § 679.91(f)(3).

The harvest specifications for yellowfin sole included in the harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) are revised as follows: 38,512 mt to the BSAI trawl limited access sector and 98,982 mt to the Amendment 80 cooperative in the in the BSAI. Table 7 is correctly revised and republished in its entirety as follows:

TABLE 7—2008 AND 2009 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch						Flathead sole	Rock sole	Yellowfin sole	
	Eastern Aleutian District		Central Aleutian District		Western Aleutian District		BSAI	BSAI	BSAI	
	2008	2009	2008	2009	2008	2009	2008 and 2009	2008 and 2009	2008	2009
TAC	4,900	4,810	4,990	4,900	7,610	7,490	50,000	75,000	225,000	205,000
CDQ	524	515	534	524	814	801	5,350	8,025	24,075	21,935
ICA	100	100	10	10	10	10	4,500	5,000	2,000	2,000
BSAI trawl limited access	214	420	222	437	136	134	0	0	38,512	37,368

TABLE 7—2008 AND 2009 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS—Continued

[Amounts are in metric tons]

Sector	Pacific ocean perch						Flathead sole	Rock sole	Yellowfin sole	
	Eastern Aleutian District		Central Aleutian District		Western Aleutian District		BSAI	BSAI	BSAI	
	2008	2009	2008	2009	2008	2009			2008 and 2009	2008 and 2009
Amendment 80	4,062	3,776	4,224	3,929	6,650	6,545	40,150	61,975	160,413	143,697
Amendment 80 limited access ¹	2,154	0	2,240	0	3,526	0	4,392	14,972	61,431	0
Amendment 80 cooperatives ¹	1,908	0	1,984	0	3,124	0	35,758	47,003	98,982	0

¹The 2009 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2008.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of yellowfin sole from the BSAI trawl limited access sector to the Amendment 80 cooperative in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2008.

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

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

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

Dated: October 20, 2008.

Emily H. Menashes,

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

[FR Doc. E8–25332 Filed 10–20–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XL43

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

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Steve Whitney, 907–586–7269.

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

The 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea Subarea of the BSAI is 8,232 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008), reallocation (73 FR 44173, July 30, 2008), and correction (73 FR 47559, August 14, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea Subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,222 mt and is setting aside the remaining 10 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed

fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea Subarea of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District and Bering Sea Subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2008.

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

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

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

Dated: October 20, 2008.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E8-25331 Filed 10-20-08; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XL45

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch by Vessels in the Amendment 80 Limited Access Fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

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

The 2008 Pacific ocean perch TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI is 2,154 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.20(a)(10)(i), § 679.20(a)(10)(ii), and § 679.91(c)(4).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has

determined that the 2008 Pacific ocean perch TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,600 mt and is setting aside the remaining 554 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2008.

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

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

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

Dated: October 20, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E8-25330 Filed 10-20-08; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 071106673-8011-02]****RIN 0648-XL42****Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area**

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2008 total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2008, through 1200 hrs, A.l.t., October 23, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 4, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-XL42," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying

Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

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

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on October 11, 2008 (73 FR 61366, October 16, 2008).

NMFS has determined that approximately 152 mt of the 2008 Atka mackerel TAC specified for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is opening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for the 2008 TAC of Atka mackerel in these

areas specified for vessels participating in the BSAI trawl limited access fishery effective 1200 hrs, A.l.t., October 23, 2008.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2008. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea by vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 4, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 20, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E8-25327 Filed 10-20-08; 4:15 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 73, No. 206

Thursday, October 23, 2008

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2008-0094]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security General Legal Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security General Legal Records system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes 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.

DATES: Comments must be received on or before November 24, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS-2008-0094, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues, please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to section 1512 of the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern general legal records.

As part of its efforts to streamline and consolidate its Privacy Act records systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS general legal records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling general legal records.

In this notice of proposed rulemaking, DHS now is proposing to exempt General Legal Records, in part, from certain provisions of the 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 personally identifiable information. 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. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of 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 regarding the uses to which personally identifiable information is put, and to

assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for General Legal Records. Some information in General Legal Records relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for General Legal Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend 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: Public Law 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. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph “12”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

12. The Department of Homeland Security General Legal Records system of records consists of electronic and paper records and will be used by DHS and its components. General Legal Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. General Legal Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1), (2), (3) and (5) this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures

pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) 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.

Dated: October 14, 2008.

Hugo Teufel III,
Chief Privacy Officer, Department of
Homeland Security.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. APHIS–2006–0159]

RIN 0579–AC69

Handling of Animals; Contingency Plans

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to add requirements for contingency planning and training of personnel by research facilities and by dealers, exhibitors, intermediate handlers, and carriers. We are proposing these requirements because we believe all licensees and registrants should develop

a contingency plan for all animals regulated under the Animal Welfare Act in an effort to better prepare for potential disasters. This action would heighten the awareness of licensees and registrants regarding their responsibilities and help ensure a timely and appropriate response should an emergency or disaster occur.

DATES: We will consider all comments that we receive on or before December 22, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0159> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2006-0159, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0159.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Jodie Kulpa-Eddy, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 734-7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1 and 2, and 9 CFR part 3 contains standards for the humane handling, care,

treatment, and transportation of animals covered by the AWA. Part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified.

The only requirement for contingency planning by licensees and registrants currently in the regulations is located in § 3.101(b), which covers water and power supply requirements at facilities housing marine mammals. Specifically, this section requires facilities to submit written contingency plans to the Deputy Administrator of Animal Care (AC) regarding emergency sources of water and electric power should primary sources fail. Among other things, the plans must include evacuation plans in the event of a disaster and a description of backup systems and/or arrangements for relocating marine mammals requiring artificially cooled or heated water.

Following the events experienced during the 2005 hurricane season, a Federal document, "The Federal Response to Katrina: Lessons Learned," which can be found on the Internet at <http://www.whitehouse.gov/reports/katrina-lessons-learned/>, was published that highlighted the need for planning to minimize the impact of disasters. AC's experience indicates that, although contingency planning would benefit the health and welfare of animals covered by the AWA, at least some entities responsible for regulated animals have not undertaken such planning. Therefore, we believe all licensees and registrants should be required to develop a contingency plan for all animals regulated under the AWA in an effort to better prepare for potential disasters. We are proposing to add requirements for contingency plans, and training of personnel regarding their roles and responsibilities, to a new § 2.38(l) for research facilities and to a new § 2.134 for dealers, exhibitors, intermediate handlers, and carriers. For marine mammal facilities, these proposed requirements would be in addition to the requirements of § 3.101(b) mentioned above.

The regulations in current § 2.38(i) allow a person or premises to be designated as a recognized animal site for holding animals in lieu of a research facility, if the research facility obtains prior approval of the AC Regional Director. Likewise, the regulations in § 2.102 allow a person or premises to be designated as a recognized animal site for holding animals in lieu of a dealer,

exhibitor, or intermediate handler if the dealer, exhibitor, or intermediate handler obtains prior approval of the AC Regional Director. We would also amend these provisions to require that any site so designated either be directly included in the contingency plan of the research facility, dealer, exhibitor, or intermediate handler or develop its own contingency plan in accordance with the regulations for research facilities, dealers, exhibitors, or intermediate handlers.

Due to the fact that the individual circumstances for facilities may be different (e.g., holding exotic animals versus pet animals, being situated in a State with a cold climate versus a temperate climate, etc.), it is difficult to go into specific detail as to what elements must be included in all contingency plans. However, we are proposing a set of general criteria to which contingency plans would have to adhere. These criteria would require licensees and registrants to develop contingency plans that:

- Identify situations the facility might experience that would trigger the need for a contingency plan, including emergencies such as electrical outages, faulty HVAC systems, fires, and animal escapes, as well as natural disasters the facility is most likely to experience. Listings of areas most at risk for specific natural disasters can be found on the U.S. Geological Survey Web site at <http://www.usgs.gov/hazards> or on the Weather Channel Web site at <http://www.weather.com/ready/?from=secondarynav>.

- Outline specific tasks required to be carried out in response to the identified emergencies including, but not limited to, detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.

- Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks.

- Address how response and recovery will be handled in terms of materials, resources, and training needed.

We are also considering the development of a guidance document (or other means) to provide examples of elements that may be included in contingency plans. We welcome public comment on Web sites, articles, or other sources that may be used to develop such guidance, in addition to suggestions as to what elements should be included as examples for an adequate contingency plan. We would retain the specific requirements in § 3.101(b) that are applicable to marine mammals.

We are further proposing that the plans be made available to APHIS upon request and, in the case of research facilities, to any funding Federal agency representatives. Contingency plans would have to be in place 180 days after any final rule following this proposal became effective and would have to be reviewed by the research facility, dealer, exhibitor, intermediate handler, or carrier on at least an annual basis. Training of personnel would have to take place within 60 days following the adoption of a contingency plan by the research facility, dealer, exhibitor, intermediate handler, or carrier. Employees hired within 30 days or less after adoption of the contingency plan would be included in the training period taking place within 60 days following adoption of the contingency plan. For employees hired more than 30 days after adoption of the contingency plan, training would have to be conducted within 30 days of their start date. Training of personnel could be developed and offered by the research facility, dealer, exhibitor, intermediate handler, or carrier or provided by an outside entity.

Each research facility, dealer, exhibitor, intermediate handler, or carrier would be expected to review its contingency plan on at least an annual basis to ensure their plan adequately addresses the four criteria listed above. For licensees and registrants who travel with animals or have multiple sites where animals are maintained, their contingency plans would have to address potential hazards for all areas where the animals are maintained for regulated purposes. Any changes to a contingency plan resulting from the annual review would have to be communicated to employees through training, which would have to be conducted within 30 days of making the changes. The plan would also be reviewed by APHIS personnel as a part of the routine inspection process (similar to the process for our review of dog exercise and nonhuman primate environment enhancement plans).

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis, which is summarized below. The analysis includes an initial regulatory flexibility analysis that considers the potential economic effects of the proposed rule on

small entities as required by the Regulatory Flexibility Act, and a cost-benefit analysis as required by Executive Order 12866. The full economic analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov). The full analysis may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Lack of disaster preparedness can leave businesses and organizations and the animals in their care vulnerable, as was the case in the southern United States in 2005. The devastating impact of the 2005 hurricane season, in particular the many animals that were stranded and died in the aftermath of Hurricane Katrina, underscores the need for contingency planning for all animals covered under the Animal Welfare Act. Regulated animal populations, in addition to non-regulated animal populations, suffered as a result of the hurricane. In one particular instance, 90 percent of the animals left in a facility after personnel were evacuated either died or had to be humanely euthanized.

In 2004, USDA's Animal Care reported 1,101,958 animals, including dogs, cats, guinea pigs, nonhuman primates, hamsters, and rabbits, were used by registered research facilities (http://www.aphis.usda.gov/animal_welfare/publications_and_reports.shtml). This does not include regulated animals in zoos and other types of facilities. This high number of animals used by research facilities illustrates the need for contingency plans to protect animals and mitigate impacts of natural and manmade disasters.

Currently, only facilities that house marine mammals are required under the regulations to develop contingency plans. The proposed rule would require that all licensees and registrants, of which there are more than 10,000, develop and document contingency plans for all other animals covered under the Act. In addition, training and familiarization with these plans would have to be provided to all facility employees.

The proposed requirements may affect research facilities, dealers, exhibitors, intermediate handlers, and carriers that fall into nine categories of the North American Industry Classification System (NAICS). For the purposes of this analysis, the potentially affected entities are classified within the following industries: All Other Animal Production (NAICS 112990), Pet and Pet

Supplies Stores (NAICS 453910),¹ Schedule Freight Transport (NAICS 48112), Research and Development in Physical Engineering and Life Sciences (NAICS 541710), Veterinary Services (NAICS 541940), Zoos and Botanical Gardens (NAICS 712130), Nature Park and Other Similar Institutions (NAICS 712190), Environment Conservation and Wildlife Organizations (NAICS 813312), and Pet Care Services (NAICS 812910). Data are unavailable on the size of the specific entities, but we may assume that the majority of the establishments that would be affected by the rule are small, based on the industry estimates obtained from the Economic Census and the Census of Agriculture.

In terms of economic impacts, we anticipate that the proposed changes would only impose minimal costs to develop and document the contingency plans and provide employee training. This is because the cost of training for facility personnel is expected to vary depending on the type and size of business and many of the larger facilities, in particular, already have contingency plans in place. In addition, there is a wealth of information available from various Federal and State agencies and private organizations that addresses animal disaster planning. A list of resources that may aid in the development and implementation of contingency plans is included in the full economic analysis.

We do not have any estimates of the costs of implementing contingency plans for facilities that do not already have contingency plans in place, such as the costs of equipment or materials that may be needed. We welcome public comment on the types of equipment or materials that may be needed to implement contingency plans and the costs of this equipment or materials.

Significant Alternatives to the Rule

One alternative to the rule would be to require that all licensees and registrants submit their contingency plans to APHIS for review, as is required for the marine mammal facilities. There are more than 10,000 licensees and registrants that would be submitting plans for review under this alternative, which we expect would take an enormous amount of resources for the Agency to process, review, and store. Another alternative would be to retain the status quo, i.e., not amend the regulations to require regulated entities other than marine mammal facilities to prepare contingency plans. However, we believe that this alternative would

¹ Businesses are included in this category if they deal in exotic pets such as primates.

not provide adequate protection for the general public and the animals in these facilities. Thus, the approach we are proposing in this document, which would ensure that contingency plans are developed and can be reviewed by APHIS during scheduled inspection visits or at other times, is preferred.

Summary

Preparedness for disasters can reduce harm caused to animals and loss of life. The devastating impact of the 2005 hurricane season underscores the need for contingency planning for all animals covered under the Animal Welfare Act. Currently, only facilities that house marine mammals are required under 9 CFR 3.101 to develop contingency plans. The proposed rule would require that all licensees and registrants develop and document contingency plans for all other animals covered under the Act. In addition, training and familiarization with these plans would be provided to all facility employees. The licensees and registrants fall into various categories of the North American Industry Classification System and while no economic data are available on business size for the specific entities, we may assume the majority of the establishments are small, based on the industry estimates obtained from the Economic Census and the Census of Agriculture. In terms of economic impacts, we anticipate that the proposed rule would only impose minimal costs to develop and document the contingency plans and provide employee training. The cost of training for facility personnel is expected to vary depending on the type and size of business. Many of the larger facilities, in particular, already have contingency plans in place. Overall, we do not anticipate a substantial economic impact on the entities affected. Nevertheless, APHIS welcomes public comment on the proposed rule's possible impacts, including the cost of implementing contingency plans.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2006-0159. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0159, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The proposed rule would amend the current regulations and would require all licensees and registrants, which include research facilities, dealers, exhibitors, intermediate handlers, and carriers, to develop and document contingency plans for the handling of animals during all emergencies or disasters.

These criteria would require licensees and registrants to develop contingency plans that:

- Identify situations the facility might experience that would trigger the need for a contingency plan, including emergencies such as electrical outages, faulty HVAC systems, fires, and animal escapes, as well as natural disasters the facility is most likely to experience.

- Outline specific tasks required to be carried out in response to the identified emergencies or disasters including, but not limited to, detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.

- Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks.

- Address how response and recovery will be handled in terms of materials, resources, and training needed.

We are further proposing that the plans be made available to APHIS upon request and, in the case of research

facilities, to any funding Federal agency representatives. Contingency plans would have to be in place 180 days after any final rule following this proposal became effective and would have to be reviewed by the research facility, dealer, exhibitor, intermediate handler, or carrier on at least an annual basis.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated at 4 to 6 hours (average 5 hours) per response.

Respondents: Dealers, exhibitors, research facilities, carriers and intermediate handlers.

Estimated annual number of respondents: 10,351.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10,351.

Estimated total annual burden on respondents: 51,755 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to

E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

PART 2—REGULATIONS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. Section 2.38 is amended by adding new paragraphs (i)(4) and (l) to read as follows:

§ 2.38 Miscellaneous.

* * * * *

(i) * * *

(4) The other person or premises must either be directly included in the research facility's contingency plan required under paragraph (l) of this section or must develop its own contingency plan in accordance with paragraph (l) of this section.

* * * * *

(l) *Contingency planning.* (1) Research facilities must develop, document, and follow an appropriate plan to provide for the humane handling, treatment, transportation, housing, and care of their animals in the event of an emergency or disaster (one which could reasonably be anticipated and expected to be detrimental to the good health and well-being of the animals in their possession). Such contingency plans must:

(i) Identify situations the facility might experience that would trigger the need for a contingency plan, including emergencies such as electrical outages, faulty HVAC systems, fires, and animal escapes, as well as natural disasters the facility is most likely to experience.

(ii) Outline specific tasks required to be carried out in response to the identified emergencies or disasters including, but not limited to, detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.;

(iii) Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks; and

(iv) Address how response and recovery will be handled in terms of

materials, resources, and training needed.

(2) The contingency plan must be in place by [date 180 days after effective date of final rule]. This plan must be made available to APHIS and any funding Federal agency representatives upon request. The plan must be reviewed by the research facility on at least an annual basis to ensure that it adequately addresses the criteria listed in paragraph (l)(1) of this section. Facilities maintaining or otherwise handling marine mammals in captivity must also comply with the requirements of § 3.101(b) of this subchapter.

(3) The facility must provide and document participation in and successful completion of training for its personnel regarding their roles and responsibilities as outlined in the plan. Training of facility personnel must be completed within 60 days of the adoption date required under paragraph (l)(2) of this section; employees hired 30 days or less after that date must also be trained within that 60-day period. For employees hired more than 30 days after adoption of the contingency plan, training must be conducted within 30 days of their start date. Any changes to the plan as a result of the annual review must be communicated to employees through training which must be conducted within 30 days of making the changes.

3. Section 2.102 is amended by adding new paragraphs (a)(4) and (b)(3) to read as follows:

§ 2.102 Holding facility.

(a) * * *

(4) The other person or premises must either be directly included in the dealer's or exhibitor's contingency plan required under § 2.134 or must develop its own contingency plan in accordance with § 2.134.

* * * * *

(b) * * *

(3) The other person or premises must either be directly included in the intermediate handler's contingency plan required under § 2.134 or must develop its own contingency plan in accordance with § 2.134.

4. A new section § 2.134 is added to read as follows:

§ 2.134 Contingency planning.

(a) Dealers, exhibitors, intermediate handlers, and carriers must develop, document, and follow an appropriate plan to provide for the humane handling, treatment, transportation, housing, and care of their animals in the event of an emergency or disaster (one which could reasonably be anticipated and expected to be detrimental to the

good health and well-being of the animals in their possession). Such contingency plans must:

(1) Identify situations the facility might experience that would trigger the need for a contingency plan, including emergencies such as electrical outages, faulty HVAC systems, fires, and animal escapes, as well as natural disasters the facility is most likely to experience;

(2) Outline specific tasks required to be carried out in response to the identified emergencies or disasters including, but not limited to, detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.;

(3) Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks; and

(4) Address how response and recovery will be handled in terms of materials, resources, and training needed.

(b) The contingency plan must be in place by [date 180 days after effective date of final rule]. This plan must be made available to APHIS upon request. The plan must be reviewed by the dealer, exhibitor, intermediate handler, or carrier on at least an annual basis to ensure that it adequately addresses the criteria listed in paragraph (a) of this section. Dealers, exhibitors, intermediate handlers, and carriers maintaining or otherwise handling marine mammals in captivity must also comply with the requirements of § 3.101(b) of this subchapter.

(c) Dealers, exhibitors, intermediate handlers, and carriers must provide and document participation in and successful completion of training for personnel regarding their roles and responsibilities as outlined in the plan. Training of dealer, exhibitor, intermediate handler, and carrier personnel must be completed within 60 days of the adoption date required under paragraph (b) of this section. Employees hired 30 days or less after that date must also be trained within that 60-day period. For employees hired more than 30 days after adoption of the contingency plan, training must be conducted within 30 days of their start date. Any changes to the plan as a result of the annual review must be communicated to employees through training which must be conducted within 30 days of making the changes.

Done in Washington, DC, this 17th day of October 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8-25289 Filed 10-22-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0952; Directorate Identifier 98-ANE-49-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF6-80A, CF6-80C2, and CF6-80E1 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric Company (GE) CF6-80A, CF6-80C2, and CF6-80E1 series turbofan engines. That AD currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required inspection of selected critical life-limited parts at each piece-part exposure. This proposed AD would require revisions to the CF6-80A, CF6-80C2, and CF6-80E1 series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements, and to update certain Engine Manual Inspection Task and Sub Task Number references. This proposed AD results from the need to require enhanced inspection of selected critical life-limited parts of CF6-80A, CF6-80C2, and CF6-80E1 series engines. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by December 22, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the instructions for sending your comments electronically.

- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: robert.green@faa.gov; telephone (781) 238-7754; (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-0952; Directorate Identifier 98-ANE-49-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

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 the

same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On April 3, 2002, we issued AD 2002-07-12, Amendment 39-12707 (67 FR 17279, April 10, 2002), to require revisions to the ALS of the manufacturer's ICA for GE CF6-80A, CF6-80C2, and CF6-80E1 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Additional Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained engine failures. This proposal would require revisions to the CF6-80A, CF6-80C2, and CF6-80E1 series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

FAA's Determination and Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002-07-12 to add additional inspections for certain high-pressure turbine (HPT) components, and to update certain Engine Manual Inspection Task and or Sub Task Number references. These inspections would be required at each piece-part opportunity. For reference, this proposed AD carries forward the requirements from AD 2002-07-12. Also for reference, the parts added to the table in the compliance section of this AD are identified by an asterisk (*) that precedes the part nomenclature. Also for reference, parts that have an Engine Manual Inspection Task and or Sub Task Number reference updated in the table in the compliance section of this AD, are identified by two asterisks (**) that precede the part nomenclature.

Costs of Compliance

We estimate that this proposed AD would affect 315 CF6-80A series engines and 926 CF6-80C2 series engines installed on airplanes of U.S.

registry. We also estimate that it would take about 5 work-hours per CF6–80A series engine and about 2 work-hours per CF6–80C2 series engine to do the proposed additional inspections and that the average labor rate is \$80 per work-hour. The total cost of the new inspections per CF6–80A series engine would be about \$400. The total cost of the new inspections per CF6–80C2 series engine would be about \$160. We estimate that there will be about 42 shop visits per year for CF6–80A series engines, and about 128 shop visits per year for CF6–80C2 series engines that result in piece-part-exposure of the added affected components. Therefore, we estimate the total annual cost for the additional inspections to be \$37,280.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 removing Amendment 39–12707 (67 FR 17279, April 10, 2002) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. FAA–2008–0952; Directorate Identifier 98–ANE–49–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 22, 2008.

Affected ADs

(b) This AD supersedes AD 2002–07–12, Amendment 39–12707.

Applicability

(c) This AD applies to General Electric Company CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines. These engines are installed on, but not limited to, Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of CF6–80A, CF6–80C2, and CF6–80E1 series engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

Inspections

(f) Within the next 180 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: "MANDATORY INSPECTIONS"

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual inspection chapter
For CF6–80A Engines		
Disk, Fan Rotor, Stage 1	All	72–21–03 Paragraph 3. Fluorescent-Penetrant Inspect, and 72–21–03 Paragraph 4. Eddy Current Inspect.
Fan Forward Shaft	All	72–21–05 Paragraph 2. Magnetic Particle Inspect.
Fan Mid Shaft	All	72–24–01 Paragraph 2. Magnetic Particle Inspect.
Disk, HPC Rotor, Stage One	All	72–31–04 Paragraph 3. Fluorescent-Penetrant Inspect.
** Disk, HPC Rotor, Stage Two	All	72–31–05 Paragraph 4. Fluorescent-Penetrant Inspect.
Spool, HPC Rotor, Stage 3–9	All	72–31–06 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk, HPC Rotor, Stage 10	All	72–31–07 Paragraph 3. Fluorescent-Penetrant Inspect.
Spool, HPC Rotor, Stage 11–14	All	72–31–08 Paragraph 3.A. Fluorescent-Penetrant Inspect.
Rotating CDP Seal	All	72–31–10 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk Shaft, HPT Rotor Stage One ..	All	72–53–02 Paragraph 3. Fluorescent-Penetrant Inspect per 70–32–02, and 72–53–02 Paragraph 6.C. Disk Rim Bolt Hole Eddy Current Inspection, and 72–53–02 Paragraph 6.D. Disk Bore Eddy Current Inspection. 72–53–02 Paragraph 6.E. Disk Dovetail Slot Bottom Eddy Current Inspection.
* Disk Shaft, HPT Rotor Stage One	All	

Part nomenclature	Part No. (P/N)	Inspect per engine manual inspection chapter
* Disk Shaft, HPT Rotor, Stage One	P/Ns 2047M33G01 thru G10, and P/N 9362M58G11.	72-53-02 Paragraph 7. Disk Dovetail Slot Bottom Aft Corner Chamfers Eddy Current Inspection.
Disk, HPT Rotor, Stage Two	All	72-53-06 Paragraph 3. Fluorescent-Penetrant Inspection, and 72-53-06 Paragraph 6. Eddy Current Inspection of Rim Bolt Holes for Cracks, and 72-53-06 Paragraph 7. Disk Bore Eddy Current Inspection.
Disk, LPT Rotor Stage 1-4	All	72-57-02 Paragraph 3. Fluorescent-Penetrant Inspection.
Shaft, LPT Rotor	All	72-57-03 Paragraph 3. Fluorescent-Penetrant Inspection, and 72-57-03 Paragraph 6. Eddy Current Inspection.

For All CF6-80C2 Engines

Disk, Fan Rotor, Stage 1	All	Task 72-21-03-200-000-004 Fluorescent-Penetrant Inspection, and Task 72-21-03-200-000-008 Eddy Current Inspect Fan Rotor Disk Stage 1 Bore, Forward and Aft Hub Faces, and Bore Radii.
Shaft, Fan Forward	All	Task 72-21-05-200-000-001 Fluorescent Penetrant Inspection, and Task 72-21-05-200-000-005 Vent Hole Eddy Current Inspection.
Fan Mid Shaft	All	Task 72-24-01-200-000-003 Magnetic Particle Inspection.
HPCR Stage 1 Disk	All	Task 72-31-04-200-000-002 Fluorescent Penetrant Inspection.
HPCR Stage 2 Disk	All	Task 72-31-05-200-000-002 Fluorescent Penetrant Inspection.
HPCR Stage 3-9 Spool	All	Task 72-31-06-200-000-001 Fluorescent Penetrant Inspection.
HPCR Stage 10 Disk	All	Task 72-31-07-200-000-001 Fluorescent Penetrant Inspection.
HPCR Stage 11-14 Spool/Shaft	All	Task 72-31-08-200-000-002 Fluorescent Penetrant Inspection.
No. 4 Bearing Rotating (CDP) Air Seal.	All	Task 72-31-10-200-000-001 Fluorescent Penetrant Inspection or
HPCR Stage 10-14 Spool/Shaft	All	Task 72-31-10-200-000-A01 Fluorescent Penetrant Inspection.
**Disk/Shaft, HPT Rotor, Stage One.	All	Task 72-31-22-200-000-002 Fluorescent Penetrant Inspection.
		Task 72-53-02-200-000-001 (Inspection—Configuration 1), or Task 72-53-02-230-801 (Inspection—Configuration 2), Fluorescent-Penetrant Inspect, and
		Task 72-53-02-200-000-005 (Inspection—Configuration 1), or Task 72-53-02-250-802 (Inspection—Configuration 2), Disk Rim Bolt Hole Eddy Current Inspection, and
		Task 72-53-02-200-000-006 (Inspection—Configuration 1), or Task 72-53-02-250-803 (Inspection—Configuration 2), Disk Bore Area Eddy Current Inspection, and
		Task 72-53-02-200-000-007 (Inspection—Configuration 1), or Task 72-53-02-250-804 (Inspection—Configuration 2), Disk Dovetail Slot Bottom Eddy Current.
* Disk/Shaft, HPT Rotor, Stage One	P/N 1531M84G12 and P/Ns 2047M32G01 thru G07.	Task 72-53-02-250-801 (Inspection—Configuration 1), Disk Dovetail Slot Bottom Aft Corner Chamfers Eddy Current Inspection.
Disk, HPT Rotor, Stage Two	All	Task 72-53-06-200-000-002 Fluorescent-Penetrant Inspect, and Task 72-53-06-200-000-006 Disk Rim Bolt Hole Eddy Current Inspection, and
LPTR Stage 1-5 Disks	All	Task 72-53-06-200-000-007 Disk Bore Eddy Current Inspection.
LPTR Shaft	All	Task 72-57-02-200-000-001 Fluorescent-Penetrant Inspection.
		Task 72-57-03-200-000-002 Fluorescent-Penetrant Inspect, and Task 72-57-03-200-000-006 Eddy Current Inspection.

For CF6-80C2 Engines configured with the R88DT Turbine (Models CF6-80C2B2F, 80C2B4F, 80C2B6F, 80C2B7F, 80C2B8F)

Disk/Shaft, HPT Rotor, Stage One (R88DT, No Rim Bolt Holes).	All	Task 72-53-16-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-16-200-000-005 Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor, Stage Two (R88DT, No Rim Bolt Holes).	All	Task 72-53-18-200-000-002 Fluorescent-Penetrant Inspect, and Task 72-53-18-200-000-005 Disk Bore Area Eddy Current Inspection.
Rotating Interstage Seal (R88DT) ..	All	Task 72-53-17-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-17-200-000-005 Seal Bore Area Eddy Current.
Forward Outer Seal (R88DT)	All	Task 72-53-21-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-21-200-000-004 Seal Bore Area Eddy Current.

For CF6-80E1 Engines

Disk, Fan Rotor, Stage One	All	Sub Task 72-21-03-230-051 Fluorescent-Penetrant Inspection, and Sub Task 72-21-03-250-051 or 72-21-03-250-052 Disk Bore Eddy Current Inspection.
Shaft, Fan	All	Sub Task 72-21-05-230-051 Fluorescent Penetrant Inspection, and Sub Task 72-21-05-250-051 Vent Hole Eddy Current Inspection.
Compressor Rotor, Stage 1 Disk	All	Sub Task 72-31-04-230-051 Fluorescent Penetrant Inspection.
Compressor Rotor, Stage 2 Disk	All	Sub Task 72-31-05-230-051 Fluorescent Penetrant Inspection.

Part nomenclature	Part No. (P/N)	Inspect per engine manual inspection chapter
Compressor Rotor, Stage 3–9 Spool.	All	Sub Task 72–31–06–230–051 Fluorescent Penetrant Inspection.
Compressor Rotor, Stage 10 Disk (Pre SB 72–0150).	All	Sub Task 72–31–07–230–051 Fluorescent Penetrant Inspection.
Compressor Rotor Spool/Shaft, Stage 11–14 (Pre SB 72–0150).	All	Sub Task 72–31–08–230–051 Fluorescent Penetrant Inspection.
Compressor Rotor Spool/Shaft, Stage 10–14 (SB 72–0150).	All	Sub Task 72–31–23–230–052 Fluorescent Penetrant Inspection.
Compressor Rotor No. 4 Bearing Rotating Air Seal (CDP Rotating Seal).	All	Sub Task 72–31–10–230–051 Fluorescent Penetrant Inspection.
HPT Disk/Shaft, Stage 1	All	Sub Task 72–53–02–230–051 Fluorescent-Penetrant Inspection, and Sub Task 72–53–02–250–051 Eddy Current Inspection, Rim Bolt Holes, and Sub Task 72–53–02–250–054 Eddy Current Inspection, Disk Bore.
HPT Disk, Stage 2	All	Sub Task 72–53–06–230–051 Fluorescent-Penetrant Inspection, and Sub Task 72–53–06–250–051 Eddy Current Inspection, Rim Bolt Holes, and Sub Task 72–53–06–250–054 Eddy Current Inspection, Disk Bore.
LPT Rotor Shaft	All	Sub Task 72–55–01–240–051 Magnetic Particle Inspect.
LPT Disks, Stages 1–5	All	Sub Task 72–57–02–230–051 Fluorescent-Penetrant Inspect.
LPT Rotor Torque Cone	All	Sub Task 72–57–03–220–051 Fluorescent-Penetrant Inspect.

For CF6–80E1 Engines configured with the R88DT Turbine

Disk/Shaft, HPT Rotor, Stage 1 (R88DT, No Rim Bolt Holes).	All	Sub Task 72–53–16–230–052 Fluorescent-Penetrant Inspect, and Sub Task 72–53–16–250–051 Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor, Stage 2 (R88DT, No Rim Bolt Holes).	All	Sub Task 72–53–18–230–051 Fluorescent-Penetrant Inspect, and Sub Task 72–53–18–250–051 Disk Bore Area Eddy Current Inspection.
**HPT Rotor Rotating Interstage Seal (R88DT).	All	Sub Task 72–53–17–230–056 Fluorescent-Penetrant Inspect, and Sub Task 72–53–17–250–051 Seal Bore Area Eddy Current.
HPT Rotor Forward Outer Seal (R88DT).	All	Sub Task 72–53–21–230–051 Fluorescent-Penetrant Inspect, and Sub Task 72–53–21–250–051 Seal Bore Area Eddy Current.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(g) The parts added to the table of this AD are identified by an asterisk (*) that precedes the part nomenclature. Also, parts that have an Engine Manual Inspection Task and/or Sub Task Number reference updated in the table of this AD, are identified by two asterisks (**) that precede the part nomenclature.

(h) Except as provided in paragraph (i) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS of the manufacturer's ICA.

Alternative Methods of Compliance (AMOC)

(i) You must perform these mandatory inspections using the ALS of the ICA and the applicable Engine Manual unless you receive approval to use an AMOC under paragraph

(j) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

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

Maintaining Records of the Mandatory Inspections

(k) You have met the requirements of this AD when you revise the ALS of the manufacturer's ICA as specified in paragraph (f) of this AD. For air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), you have met the requirements of this AD when you modify your continuous airworthiness maintenance plan to reflect those changes. You do not need to record each piece-part inspection as compliance to this AD, but you must maintain records of those inspections according to the regulations governing your operation. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or an alternative accepted by your principal maintenance inspector if that alternative:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(l) These recordkeeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS of the manufacturer's ICA as specified in paragraph (f) of this AD. These recordkeeping requirements do not alter or amend the recordkeeping requirements for any other AD or regulatory requirement.

Related Information

(m) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: robert.green@faa.gov; telephone (781) 238–7754; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 16, 2008.

Peter A. White,

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

[FR Doc. E8-25278 Filed 10-22-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1115; Directorate Identifier 2008-NM-134-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701 & 702) Airplanes and Model CL-600-2D24 (Regional Jet Series 900) 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:

Bombardier Aerospace has completed a system safety review of the CL-600-2C10/CL-600-SD24 aircraft fuel system against the new fuel tank safety standards. * * *

The assessment showed that a single failure due to chafing of fuel system wiring with high power wiring at the centre fuel tank front spar could result in overheating of the fuel boost pump. The assessment also showed that chafing of the high power wiring with the centre fuel tank front spar structures could result in overheating of the fuel tank wall. Overheating of the fuel tank wall could lead to hot surface ignition resulting in a fuel tank explosion.

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 November 24, 2008.

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

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

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

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7331; fax (516) 794-5531.

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-2008-1115; Directorate Identifier 2008-NM-134-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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2008-24, dated July 3, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the CL-600-2C10/

CL-600-2D24 aircraft fuel system against the new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525-001 to determine if mandatory corrective action was required.

The assessment showed that a single failure due to chafing of fuel system wiring with high power wiring at the centre fuel tank front spar could result in overheating of the fuel boost pump. The assessment also showed that chafing of the high power wiring with the centre fuel tank front spar structures could result in overheating of the fuel tank wall. Overheating of the fuel tank wall could lead to hot surface ignition resulting in a fuel tank explosion.

To correct the unsafe condition, this directive mandates separation of the high power wiring from the fuel system wiring at the centre fuel tank front spar area and the installation of additional clamping and support for the high power wiring [i.e., modifying the routing and support of electrical wires in the centre fuel tank front spar area].

Required actions also include an inspection to determine if pins have a minimum of one thread above the nuts, and a visual inspection for damage of the sealant. Corrective actions include replacing pins and nuts and applying sealant. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and

maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA-24-012, Revision B, dated July 25, 2007. 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 159 products of U.S. registry. We also estimate that it would take about 102 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 \$7,646 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 \$2,513,154, or \$15,806 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, Incorporation by reference, 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:

Bombardier Inc. (Formerly Canadair):

Docket No. FAA-2008-1115; Directorate Identifier 2008-NM-134-AD.

Comments Due Date

- (a) We must receive comments by November 24, 2008.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10169 inclusive.

(2) Bombardier Model CL-600-2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15030 inclusive.

Subject

- (d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: Bombardier Aerospace has completed a system safety review of the CL-600-2C10/CL-600-2D24 aircraft fuel system against the new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-

compliances were assessed using Transport Canada Policy Letter No. 525-001 to determine if mandatory corrective action was required.

The assessment showed that a single failure due to chafing of fuel system wiring with high power wiring at the center fuel tank front spar could result in overheating of the fuel boost pump. The assessment also showed that chafing of the high power wiring with the centre fuel tank front spar structures could result in overheating of the fuel tank wall. Overheating of the fuel tank wall could lead to hot surface ignition resulting in a fuel tank explosion.

To correct the unsafe condition, this directive mandates separation of the high power wiring from the fuel system wiring at the centre fuel tank front spar area and the installation of additional clamping and support for the high power wiring [i.e., modifying the routing and support of electrical wires in the center fuel tank front spar area].

Required actions also include an inspection to determine if pins have a minimum of one thread above the nuts, and a visual inspection for damage of the sealant. Corrective actions include replacing pins and nuts and applying sealant.

Actions and Compliance

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

(1) Within 4,500 flight hours after the effective date of this AD, modify the routing and support of the electrical wires in the center fuel tank front spar area (including an inspection to determine if pins have a minimum of one thread above the nuts, and a visual inspection for damage of the sealant, and applicable corrective actions) in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA-24-012, Revision B, dated July 25, 2007. Do all applicable related investigative and corrective actions before further flight.

(2) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA-24-012, dated April 18, 2005, or Revision A, dated October 25, 2006, are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: 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, Airframe and Propulsion Branch, ANE-171, 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: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7331; fax (516) 794-5531. 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 Canadian Airworthiness Directive CF-2008-24, dated July 3, 2008, and Bombardier Service Bulletin 670BA-24-012, Revision B, dated July 25, 2007, for related information.

Issued in Renton, Washington, on October 10, 2008.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E8-25309 Filed 10-22-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1120; Directorate Identifier 2008-CE-064-AD]

RIN 2120-AA64

Airworthiness Directives; Air Tractor, Inc. Models AT-200, AT-300, AT-400, AT-500, AT-600, and AT-800 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2008-11-17, which applies to certain Air Tractor, Inc. Models AT-200, AT-300, AT-400, AT-500, AT-600, and AT-800 series airplanes. AD 2008-11-17 currently requires you to install an overturn skid plate kit or a modification to the overturn skid plate already installed. Since we issued AD 2008-11-17, the manufacturer has notified us that Model AT-401B airplanes also require a modification to the overturn skid plate. Consequently, this proposed AD would retain the actions of AD 2008-11-17 and add the requirement to modify the

overturn skid plate installed on Model AT-401B airplanes. We are proposing this AD to prevent the front and rear connections of the overturn skid plate to the airplane from breaking, which could allow foreign debris to enter the cockpit during an airplane overturn. This condition, if not corrected, could lead to pilot injury.

DATES: We must receive comments on this proposed AD by November 24, 2008.

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

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

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

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

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

For service information identified in this proposed AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564-5616; fax: (940) 564-5612; e-mail: airmail@airtractor.com; Internet: <http://www.airtractor.com>.

FOR FURTHER INFORMATION CONTACT:

Andy McAnaul, Aerospace Engineer, ASW-150, FAA San Antonio MIDO-43, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308-3365; fax: (210) 308-3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2008-1120; Directorate Identifier 2008-CE-064-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

substantive verbal contact we receive concerning this proposed AD.

Discussion

Reports of foreign material entering the cabin area during an overturn skid on Air Tractor, Inc. (Air Tractor) AT-301 and AT-401 series airplanes caused us to issue AD 2002-25-09, Amendment 39-12985 (67 FR 78156, December 23, 2002). AD 2002-25-09 required you to install overturn skid plate, part number (P/N) 11411-1-500 or an FAA-approved equivalent P/N. The manufacturer incorporated skid plates in some production models including Models AT-401B, AT-402B, AT-502B, AT-602, and AT-802A airplanes.

Since we issued AD 2002-25-09, we received a report of the bolts breaking in an overturn accident where they attach the forward end of the original design overturn skid plate to the airframe. This allowed the skid plate to rotate around the rear attach point and the forward end of the plate to enter the cockpit area. This report caused us to issue AD 2008-11-17, Amendment 39-15540 (73 FR 31351, June 2, 2008). AD 2008-11-17 currently retains the actions of AD 2002-25-09 and requires you to install

a modification kit if certain overturn skid plates are already installed.

Since we issued AD 2008-11-17, the manufacturer has notified us that Model AT-401B airplanes also require a modification to the overturn skid plane. Consequently, this proposed AD would retain the actions of AD 2008-11-17 and add the requirement to modify the overturn skid plate installed on Model AT-401B airplanes.

We are proposing this AD to prevent the front and rear connections of the overturn skid plate to the airplane from breaking, which could allow foreign debris to enter the cockpit during an airplane overturn. This condition, if not corrected, could lead to pilot injury.

Relevant Service Information

We have reviewed Snow Engineering Company Service Letter #97, Revised September 19, 2008.

The service information describes procedures for:

- Modifying the overturn skid plate by enlarging the mounting holes and replacing existing clamps and hardware on airplanes with the overturn skid plate installed; and
- Installing the overturn skid plate for airplanes that do not have the overturn skid plate currently installed.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2008-11-17 with a new AD that would retain the actions of AD 2008-11-17 and add the requirement to modify the overturn skid plate installed on Model AT-401B airplanes. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 1,309 airplanes in the U.S. registry.

In determining the total cost on U.S. operators, we presume all airplanes in the U.S. fleet have an overturn skid plate installed (as required by AD 2002-25-09) and the only cost is to incorporate the modification kit P/N 11411-1-501. We estimate the following costs to do the proposed modification of installing the overturn skid plate modification kit P/N 11411-1-501 to those planes that currently have the overturn skid plate installed:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work-hours × \$80 per hour = \$160	\$42	\$202	\$264,418

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 removing Airworthiness Directive (AD) 2008–11–17, Amendment 39–15540 (73 FR 31351, June 2, 2008), and adding the following new AD:

Air Tractor, Inc.: Docket No. FAA–2008–1120; Directorate Identifier 2008–CE–064–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by November 24, 2008.

Affected ADs

(b) This AD supersedes AD 2008–11–17, Amendment 39–15540.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Group 1 models	Serial Nos.
AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–402, AT–402A, and AT–402B	–0001 through –1196.
AT–501, AT–502, AT–502A, and AT–502B	–0001 through –2620.
AT–602	–0337 through –1153.
AT–802A	–0003 through –0282.
Group 2 model	Serial Nos.
AT–401B	–0952 through –1196.

Unsafe Condition

(d) Since we issued AD 2008–11–17, the manufacturer has notified us that Model AT–401B airplanes also require a modification to the overturn skid plate. Consequently, this proposed AD retains the actions of AD 2008–

11–17 and adds the requirement to modify the overturn skid plate installed on Model AT–401B airplanes. We are issuing this AD to prevent the front and rear connections of the overturn skid plate to the airplane from breaking, which could allow foreign debris to enter the cockpit during an airplane overturn.

This condition, if not corrected, could lead to pilot injury.

Compliance

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

Actions	Compliance	Procedures
(1) <i>For Group 1 airplanes:</i> If overturn skid plate part number (P/N) 11411–1–500 or an FAA-approved equivalent P/N is already installed then install P/N 11411–1–501 modification kit.	Within the next 180 days after July 7, 2008 (the effective date of AD 2008–11–17).	Follow Snow Engineering Co. Service Letter #97, revised November 7, 2007; or Snow Engineering Co. Service Letter #97, revised September 19, 2008.
(2) <i>For Group 1 airplanes:</i> If there is no overturn skid plate installed, then install overturn skid plate kit P/N 11411–1–502 or an FAA-approved equivalent part number.	Within the next 180 days after July 7, 2008 (the effective date of AD 2008–11–17).	Follow Snow Engineering Co. Service Letter #97, revised November 7, 2007; or Snow Engineering Co. Service Letter #97, revised September 19, 2008.
(3) <i>For Group 2 airplanes:</i> Install P/N 11411–1–501 modification kit.	Within the next 180 days after the effective date of this AD.	Follow Snow Engineering Co. Service Letter #97, revised September 19, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; e-mail: airmail@airtractor.com; Internet: <http://www.airtractor.com>. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at <http://www.regulations.gov>.

Issued in Kansas City, Missouri, on October 14, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25286 Filed 10–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. FAA–2008–1097; Notice No. 08–12]

RIN 2120–AJ31

Aircraft Noise Certification Documents for International Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would require operators of U.S. registered civil aircraft flying outside the United States to carry

aircraft noise certification information on board the aircraft. This proposed rule is needed to ensure that U.S. operators have consistent noise certification information on board when they fly outside the United States. The intended effect of this proposal is to ensure consistent compliance with the International Civil Aviation Organization, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board the aircraft.

DATES: Send your comments on or before January 21, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1097 using any of the following methods:

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

• **Mail:** Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West

Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3561; facsimile (202) 267–5594; e-mail laurette.fisher@faa.gov. For legal questions concerning this proposed rule contact Karen Petronis, Office of Chief Counsel (AGC–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; e-mail karen.petronis@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, section 44715, Controlling aircraft noise and sonic boom. Under that section, the FAA is charged with prescribing regulations to measure and abate aircraft noise. This proposed regulation is within the scope of that authority since it would require certain operators to carry on board documentation listing the noise characteristics of the aircraft. These characteristics are already contained in the aircraft flight manual and approved as part of the aircraft's airworthiness certification and compliance with 14 CFR part 36.

Background

Current U.S. regulations require that all U.S. aircraft comply with the noise certification requirements of 14 CFR part 36. Part of that certification includes the noise levels that were obtained during certification testing. Section 36.1501 requires that these certification noise levels be included in the Airplane Flight Manual (AFM) or Rotorcraft Flight Manual (RFM). These manuals must be approved by the FAA. Part 36 also contains two sections (36.1581 and 36.1583) that describe the specific noise certification data to be included in an FAA-approved AFM/RFM. However, there is no specific requirement for the entire FAA-approved AFM to be carried on board an aircraft.

For U.S. air carriers operating under part 121, a carrier is allowed to create an Aircraft Operations Manual (AOM) or a Flight Crew Operating Manual (FCOM) as an alternative to the AFM to be carried on board the aircraft. That manual typically contains only the aircraft limitations and performance information from the FAA-approved AFM. The air carriers' flight, maintenance, and ground crews would normally use these manuals. The AOM or FCOM may or may not contain the noise characteristics pages from the FAA-approved AFM, depending on the operator's needs and the manual's organization.

Several years ago, the FAA became aware of instances in which U.S. aircraft were detained at foreign airports when the noise status of the airplane was questioned. In many cases, the flightcrew had not been able to provide relevant information either because the AOM/FCOM did not contain such information, or because the information was not aggregated in one location in the on-board manual. Some foreign authorities have asked U.S. flightcrews to either produce a noise certificate or

show the noise status of the airplane from on-board documents.

ICAO Actions

The issue of noise documentation has been addressed by the Certificate Task Group (CTG) of the ICAO's Committee on Aviation Environmental Protection. In 2001, Noise Technical Working Group 1 of the CTG was tasked with examining the implementation of Annex 16 noise certification documentation requirements, and the possible international standardization of those documents. The CTG includes the FAA and several representatives of the U.S. aviation industry among its members.

The CTG considered various options for standardization of documents to be carried by aircraft operators. The ICAO member States use a variety of administrative systems, with differing requirements for noise documentation at certification and for designating documents that must be carried on board. The CTG proposed three options designed to accommodate these different practices. These three proposed options were drafted with reference to existing regulatory systems in the various States and incorporated into a new Attachment G to Annex 16 Amendment 8. The ICAO adopted Amendment 8 of Annex 16, Volume 1 on February 23, 2005, and it became effective on November 24, 2005. Section 1.4 of Annex 16 now requires that "documents attesting noise certification shall be approved by the State of Registry and required by that State to be carried on the aircraft." Attachment G to Amendment 8 provides the following three options for satisfying the certification documentation requirements of sections 1.4 and 1.5.

1. A stand-alone State-issued noise certificate in which the mandatory information requirements of Annex 16, Volume 1, are contained in a single document.

2. Two complementary documents, one of which may be the Airplane Flight Manual (AFM) or the Airline Operations Manual (AOM).

3. Three complementary documents.

Option 2 was designed to accommodate the system in effect in the United States. One of the documents contemplated under this option was an aircraft's airworthiness certificate, since it is issued only when an aircraft has demonstrated compliance with part 36. However, since U.S. airworthiness certificates do not contain any noise information, the second document would contain the noise certification data that is already required to be in the AFM/RFM.

Currently, no specific format exists for the noise information required to be in the AFM/RFM. In practice, the information may be scattered over several pages and not easily located. Further, since noise data is not required for inclusion in those parts of the manual carried on board, flightcrews may not be familiar with or even have access to this information.

Before Amendment 8 was adopted in 2005, the noise documentation section of Annex 16 was contained in a note and considered advisory material. To address the difficulties that U.S. carriers had experienced, the FAA published a draft notice of availability of proposed Advisory Circular, entitled "Guidance on Aircraft Noise Certification Documents for International Flights" (70 FR 60127, October 14, 2005). That AC included an optional form on which operators leaving the United States could compile the noise certification data envisioned by the working group.

With the adoption of Amendment 8 and the new paragraph 1.4, noise documentation must now be carried on board all U.S. aircraft operating outside the United States in order to comply with ICAO, Annex 16, Volume I. We have determined that a regulatory change to require the carriage of noise certification documents is necessary. We have chosen to propose this as an operating requirement rather than a certification requirement, because the information already exists in operators' manuals and does not affect the certification basis of an airplane. As an operating rule, it will not affect operators who do not leave the United States.

Overview of the Proposed Rule

We are proposing to amend part 91 to add a new paragraph in section 91.703 requiring operators that fly outside the United States using aircraft subject to ICAO Annex 16¹ to carry aircraft noise certification information onboard the aircraft.

While the regulatory amendment is simple, we are seeking comment on the proposed format of the documentation and the best place to have it located on board the aircraft.

Air carriers and other affected operators who leave the country are encouraged to comment on the proposed regulation, and suggest workable alternatives that could be

applied to all operators who fly outside the United States.

We are including in this proposal a draft aircraft noise documentation form. We anticipate that the information needed to complete the form will be transferred by the operator from the approved flight manual for *each* of an operator's aircraft. The form included in this proposal is nearly identical to the one we published in the draft Advisory Circular, and includes all of the information that was chosen by Working Group 1 as necessary to comply with the ICAO requirement. We have attempted to maintain the same format in an effort to make the form readily recognizable to foreign authorities. Unless there is compelling reason to do so, we do not plan on altering the placement of information on the form. The FAA will seek approval from the Office of Management and Budget to maintain it as an official form that we recommend be carried on board.

We would especially like to hear from those operators that chose to complete the form as it was published in the draft AC, including where they carry the form, how flightcrews are informed of its location, and whether it has been requested in foreign operations.

Use of this form is optional. An operator may choose to use the appropriate flight manual pages that contain the required noise data as its means of compliance with the documentation requirements of Annex 16. Alternatively, a carrier could develop its own documentation that contains the required noise data. We caution operators that do not use the FAA form to ensure that the materials they carry comply with the requirements of Annex 16, Volume I, sections 1.4 and 1.5.

We seek comment on the best place for the information, if compiled into the recommended form or other single document, to be located on board the aircraft. If it is to be carried on board as part of the AFM/RFM/AOM/FCOM, should it have its own tabbed section, be an Appendix, or be incorporated into another already familiar section? Is there a better place for a document to be located that would be accessible to the flightcrew and common to all operators? We will review the comments and include our recommendations in the final rule.

Noise Certificates Not an Option

The Working Group 1 discussions included a suggestion to the FAA that we issue noise certificates as our means of compliance. While it seems a simpler solution, the FAA does not have the legal authority to issue noise certificates as other ICAO countries do.

In a related issue, the form originally developed by Working Group 1 includes an approval by a Member State's certifying authority, such as the FAA in the United States. The FAA will not be approving the recommended form that contains the information. We interpret that action to be legally indistinguishable from issuing a noise certificate. Instead, as the draft form indicates, the information contained on the page comes from an FAA-approved flight manual. The FAA-approved noise certification data is part of the procedures for operating aircraft and not considered a limitation or restriction. The FAA has found that transfer of the FAA-approved noise data satisfies the ICAO requirement that the information on board "be approved by the State of Registry." Each operator carries the burden of a one-time correct transfer of the information for each of its aircraft.

The FAA Form

Following is a draft of the form that we recommend operators use in complying with this regulation. We anticipate that this form will be available online from the FAA Web site; its particular location on the site has not been decided, but is open for comment on accessibility. Following the form is a description of the material that goes in each section, adapted from the ICAO instructions.

Use of this form, when properly completed and carried on board, along with an airplane's airworthiness certificate, would demonstrate compliance with the proposed regulation and with ICAO Annex 16, Volume I, Part II Chapter 1, paragraphs 1.4 and 1.5. The information on this form is not new, and is in each operator's FAA-approved flight manual for each aircraft.

The boxes in this form are numbered to maintain similarity with the ICAO version. The descriptions of the information to be entered in boxes 1–2 and 4–20 are not to be altered. Box 3 is optional for use by the operator.

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¹ ICAO Annex 16, Volume I, Part II, Chapter 1, Paragraph 1.1 states that: *The provisions of 1.2 to 1.6 shall apply to all aircraft included in the*

classifications defined for noise certification purposes in Chapters 2, 3, 4, 5, 6, 8, 10, 11 and 12

of this part where such aircraft are engaged in international air navigation.

1. United States of America				
2. <u>Aircraft Noise Certification Information</u> Name of Operator (Address, Telephone, and Fax Number)				
3. Document Number: (Optional)	4. Nationality and Registration Marks:	5. Manufacturer; Manufacturer's Designation Of Aircraft (Model/Series):	6. Aircraft Serial Number:	
7. Engine:		8. Propeller: (If applicable)		
9. Maximum Takeoff Weight/ Mass: _____ pounds (_____ kg)	10. Maximum Landing Weight/ Mass: _____ pounds (_____ kg)	11. Noise Standard: (If applicable) Stage _____		
12. Additional modifications incorporated for the purpose of compliance with the applicable noise certification standards:				
13. Lateral/Full-Power Level (if applicable)	14. Approach Noise Level (if applicable)	15. Flyover Noise Level (if applicable)	16. Overflight Noise Level (if applicable)	17. Takeoff Noise Level (if applicable)
18. Subject Aircraft Noise Levels: The aircraft listed on this form meets the requirements of 14 CFR part 36. The noise information on this document has been copied from FAA-approved AFM/RFM/AOM/FCOM, number XXX-XXX-XXX, Revision X, dated MM-DD-YYYY.				
19. Date _____ 20. Signature _____ (Official of Operator)				

This document supports compliance with ICAO Annex 16, Volume 1 for noise certification documentation carried on board U.S. aircraft. Information on this form has been transferred from an FAA-approved Aircraft Flight Manual by the named operator; that operator is solely responsible for the content.

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The following describes the data to be entered on the form:

1. United States of America (ICAO-required name of member State).

2. Title (Aircraft Noise Certification Information), plus the name of the operator and contact information.

3. Document number (optional for operator's use).

4. The nationality or common mark and registration marks (in the United States, N-number).

5. The aircraft manufacturer and manufacturer's designation of the aircraft (model and series, as appropriate).

6. The aircraft serial number.

7. The type and model of the subject aircraft's engine(s) (for identification and verification of the aircraft configuration).

8. For propeller-driven airplanes, the propeller type and model.

9. The maximum takeoff mass and unit. The primary U.S. unit differs from the international unit: The appropriate conversion factor can be found in ICAO

Annex 5. To avoid confusion, a U.S. operator may choose to record weight/mass in both English and metric units. An example of a conversion change from pounds to kilograms is shown below:

Aircraft weight (pounds) conversion to aircraft mass (kilograms)²:

<i>To convert aircraft weight from</i>	<i>to</i>	<i>Multiply by</i>
pound (lb)	kilogram (kg)	4.53592 E-01

Example: For a Boeing 747-400F that weighs 875,000 lb, $875,000 \text{ (lb)} \times 4.53592 \text{ E-01 (kg/lb)} = 396,893 \text{ (kg)}$

10. The maximum landing mass and unit. To avoid confusion, a U.S. operator may choose to record weight/mass in both English and metric units. See conversion example above.

11. The Part 36 noise stage of the certificated aircraft. The terminology of aircraft certification classification in the United States is "Stage" rather than "Chapter" as used in Annex 16. The U.S. term is recognized by ICAO and is not considered a difference from Annex 16. Note that the term "Stage" is not applicable to airplanes certificated under 14 CFR part 36, Subpart F.

12. Any modifications to the aircraft incorporated for compliance with applicable noise certification standards. This item should include any modifications to the basic aircraft described in items 7 and 8.

13. The lateral/full-power noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36 certificated noise levels, expressed as Effective Perceived Noise Level (EPNdB). **NOTE:** For 14 CFR part 36, appendix B, certifications that predate Amendment 36-24 use the term "sideline" instead of "lateral."

14. The approach noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36, appendices B or H certificated noise levels, expressed as EPNdB.

15. The flyover noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36 certificated noise levels, expressed as EPNdB. For rotorcraft, certificated under appendices H or J, noise levels are expressed as either EPNdB or A-weighted Sound Exposure Level (dBA SEL), respectively. (**Note:** For 14 CFR part 36, appendix B certifications that predate Amendment 36-24 use the term "takeoff" instead of "flyover.")

16. The overflight noise level, as certificated. Operators of U.S.-registered aircraft must include the 14 CFR part 36 certificated noise levels. For small

airplanes, certificated under appendix F, noise levels are expressed as maximum A-weighted sound level (dBA). For rotorcraft, certificated under appendices H or J, noise levels are expressed as either EPNdB or A-weighted SEL (dBA SEL), respectively. Note: The terminology describing this noise level in 14 CFR part 36 is "flyover" rather than "overflight" as used in Annex 16.

17. The takeoff noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36, appendices G and H certificated noise levels as described in item 16.

18. A statement that the individual aircraft complies with the applicable noise requirements of the U.S. regulations applicable to its type and size.

19. The date on which the noise certification document was created by the operator.

20. The signature of the official of the operator attesting to the accuracy of the information in the FAA Form.

Listing multiple aircraft with similar characteristics on the same document will not be allowed. Only the data for the single aircraft listed in the serial number and registration sections is to be listed on this form. Failure to carry the correct information, regardless of form, would be a violation of the regulation.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Aircraft Noise Certification Documents For International Operations.

Summary: This proposal would add a new paragraph in § 91.703 requiring operators that fly outside the United

States, using aircraft subject to International Civil Aviation Organization (ICAO), Annex 16, to carry aircraft noise certification information on board the aircraft. It would ensure that U.S. operators have the noise certification information required to comply with CIAO Annex 16, Volume I, Amendment 8 when flying outside the United States.

Use of: This proposed rule would require operators of U.S.-registered civil aircraft flying outside the United States to carry aircraft noise certification information on board the aircraft. This proposed rule is needed to ensure compliance with ICAO, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board aircraft that fly outside their state of registry. The proposed rule would require that this information be easily accessible to the flight crew and presentable upon request to the appropriate foreign officials.

Respondents (including number of): The likely respondents to this proposed information requirement are operators of U.S.-registered airplanes that fly outside the United States.

Frequency: This form would be completed one time for each aircraft. Thus, the annual frequency of information requirement is a one-time initial response for each aircraft currently owned by the operator, then once per new aircraft acquired or modified by an operator.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

The cost of the proposed rule per affected airplane was derived by multiplying the technical writer's wage rate of \$29.95 per hour by 0.25 hours required to complete the form, and adding to that the chief pilot's wage rate of \$79.48 per hour multiplied by 0.17 hours required to review and sign the form. Thus, compliance with this

² In 1959, the directors of the national standards laboratories of the United States, Canada, the United Kingdom, Australia, New Zealand, and the

Union of South Africa agreed on common definitions of the customary length and mass units. They define the pound avoirdupois as 0.453592 kg.

The engineering practice of using lbm for pound mass is obsolete.

regulation would result in a per-airplane cost of \$21. As a result, the initial cost of the proposed rule would be \$21 per aircraft times 5,066 aircraft, for a total of \$106,386.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by December 22, 2008, and should direct them to the address listed in the **ADDRESSES** section at the end of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA policy is to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and is proposing this regulation as a means of compliance with Annex 16 regarding noise documentation carried on board aircraft that leave the United States.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses.

First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). However, for regulations with an expected minimal impact, the above-specified analyses are not required.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that the proposal or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This proposed rule would require operators of U.S. registered civil aircraft flying outside the United States subject to ICAO Annex 16, Volume 1, Amendment 8, to carry aircraft noise certification data on board the aircraft. Operators may comply with the proposed rule by transferring the data from the Airplane Flight Manual to a suggested form included in this rulemaking. Operators may also choose to carry the required information in a different format. The proposed rule would require that this information be easily accessible to the flight crew and presentable upon request to the appropriate officials.

The FAA was unable to determine the exact number of U.S. registered aircraft that would be subject to this proposed rule. Therefore, the FAA used (as an overestimate) the total number of passenger jet and cargo jet aircraft

registered to U.S. mainline carriers in its cost computations. Based on the FAA Aerospace Forecast, there are a total of 5,066 aircraft currently registered to U.S. mainline air carriers (1,034 cargo aircraft³ and 4,032 passenger jet aircraft⁴).

For the purposes of this analysis, we assume that operators would choose to comply with the proposed rule by using the provided recommended form. This form would be completed one time for each aircraft. We estimate that completion of the form would require 15 minutes of a technical writer's time and 10 minutes of a chief pilot's or chief engineer's time. The average wage rate for a technical writer is \$29.95 per hour⁵ after accounting for fringe benefits. The average wage rate for a chief pilot or chief engineer is estimated at \$79.48 per hour⁶ after accounting for fringe benefits.

The cost of the proposed rule per affected airplane was derived by multiplying the technical writer's wage rate of \$29.95 per hour by 0.25 hours required to complete the form, and adding to that the chief pilot's wage rate of \$79.48 per hour multiplied by 0.17 hours required to review and sign the form. Thus, compliance with this regulation would result in a per-airplane cost of \$21. As a result, the initial cost of the proposed rule would be \$21 per aircraft times 5,066 aircraft, for a total of \$106,386. Operators may subsequently decide to purchase or modify aircraft affected by the proposed rule. If they do so, operators would incur an extra cost of \$21 per additional airplane to bring it into compliance with ICAO Annex 16, Volume 1, Amendment 8.

This proposed rule would ensure that U.S. aircraft that fly abroad are in compliance with ICAO Annex 16, Amendment 8. Operators would benefit from the proposed rule by having the proper documentation readily available for foreign authorities, avoiding delays and detainment when noise certification status is questioned. The FAA believes that the negligible cost of compliance with this rule is outweighed by the benefit of compliance with the international standard.

³ Table 21, U.S. Mainline Air Carriers, Cargo Jet Aircraft, FAA Aerospace Forecast, FY 2008–2025.

⁴ Table 20, U.S. Mainline Air Carriers, Cargo Jet Aircraft, FAA Aerospace Forecast, FY 2008–2025.

⁵ FAA, APO–310, N & O Rule Regulatory Evaluation.

⁶ Hourly wage derived by taking median salary of \$133,916 for a chief pilot, dividing by 2080 hours per year, and multiplying by the fringe benefit factor of 1.2345. Salary source: http://swz.salary.com/salarywizard/layouthtml/swzl_compresult_national_TR20000019.html, last accessed June 30, 2008.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would ensure that U.S. operators have consistent noise certification information on board when they fly outside the United States. This rule is needed to ensure compliance with the ICAO Annex 16 that requires certain noise information be carried on board. Under the proposed rule, each small entity would incur a one-time cost of \$21 per aircraft currently in its fleet. Operators may subsequently decide to purchase or modify aircraft affected by the proposed rule; if they do so, they would incur an extra cost of \$21 per airplane to comply. The FAA does not consider this a significant cost. Therefore, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary

obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would affect only those U.S. operators that conduct international operations. The expected outcome of this proposed rule will be a minimal impact on affected operators with the net benefits of ICAO compliance.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

This proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this NPRM under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy, Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply,

Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD-ROM, mark the outside of the disk or CD-ROM and also identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we

receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 91

Aircraft, Noise control, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506, 46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat 1180).

2. Section 91.703 is amended by adding paragraph (a)(5) to read as follows:

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) * * *

(5) For aircraft subject to ICAO Annex 16, carry on board the aircraft documents that summarize the noise operating characteristics and certifications of the aircraft that

demonstrate compliance with this part and Part 36 of this chapter.

* * * * *

Issued in Washington, DC on October 17, 2008.

Carl Burleson,

Director, Office of Environment and Energy.
[FR Doc. E8-25271 Filed 10-22-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08-11-000]

Version Two Facilities Design, Connections and Maintenance Reliability Standards

Issued October 16, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission is proposing to approve three revised Reliability Standards developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. The three revised Reliability Standards, designated by NERC as FAC-010-2, FAC-011-2 and FAC-014-2, set requirements for the development and communication of system operating limits of the Bulk-Power System for use in the planning and operation horizons.

DATES: Comments are due November 24, 2008.

ADDRESSES: Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. This will enhance document retrieval for both the Commission and the public. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Attachments that exist only in paper form may be scanned. Commenters filing electronically should not make a paper filing. Service of rulemaking comments is not required. Commenters that are not

able to file electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Cory Lankford (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6711; Eddy Lim (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6713.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act,¹ the Commission is proposing to approve three revised Reliability Standards concerning Facilities Design, Connections and Maintenance (FAC) that were developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. The three revised Reliability Standards, designated by NERC as FAC-010-2, FAC-011-2 and FAC-014-2, set requirements for the development and communication of system operating limits of the Bulk-Power System for use in the planning and operation horizons.²

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.³

B. NERC's Proposed Version Two FAC Reliability Standards

3. On November 15, 2006, NERC filed 20 revised Reliability Standards and three version one FAC Reliability Standards for Commission approval. The Commission addressed the 20 revised Reliability Standards in Order

¹ 16 U.S.C. 824o (2006).

² The Commission is not proposing any new or modified text to its regulations. Rather, as set forth in 18 CFR Part 40, a proposed Reliability Standard will not become effective until approved by the Commission, and the ERO must post on its Web site each effective Reliability Standard.

³ 16 U.S.C. 824o(e)(3).

No. 693⁴ and established a separate rulemaking proceeding to address the three version one FAC Reliability Standards, which require planning authorities and reliability coordinators to establish methodologies to determine system operating limits (SOLs) for the Bulk-Power System in the planning and operation horizons. The Commission approved the version one FAC Reliability Standards in Order No. 705 and directed the ERO to address certain issues.⁵

4. On June 30, 2008, in response to the Commission's directives in Order No. 705, NERC submitted for Commission approval three revised FAC Reliability Standards:⁶ FAC-010-2—System Operating Limits Methodology for the Planning Horizon, FAC-011-2—System Operating Limits Methodology for the Operations Horizon, and FAC-014-2—Establish and Communicate System Operating Limits. NERC requests that FAC-010-2 be made effective on July 1, 2008, FAC-011-2 on October 1, 2008, and FAC-014-2 on January 1, 2009, consistent with the implementation dates of version one of these Reliability Standards.

II. Discussion

5. As discussed below, NERC's proposed revisions to the FAC Reliability Standards preliminarily appear to be just and reasonable and consistent with our direction in Order No. 705. The Commission therefore proposes to accept FAC-010-2, FAC-011-2, and FAC-014-2 effective the latter of the effective date of the final rule in this docket or NERC's proposed effective dates.⁷

A. Load Greater Than Studied

6. Requirement R2.3.2 of FAC-011-1 provided that the system's response to a single contingency may include, *inter alia*, "[i]nterruption of other network customers, only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or, if the real-time operating

conditions are more adverse than anticipated in the corresponding studies, e.g., load greater than studied." NERC asserted that a significant gap between actual and studied conditions (such as a large error in load forecast) could be treated as though it were a contingency under the version 1 of FAC-011-1 Reliability Standard.

7. In Order No. 705, the Commission disagreed with NERC's reading of FAC-011-1, sub-Requirement R2.3.2 and interpretation of the phrase "load greater than studied."⁸ However, the Commission found that the meaning of Requirement R2.3 and sub-Requirement R2.3.2 was not otherwise unclear. The Commission therefore approved FAC-011-1, but directed the ERO to revise the Reliability Standard through the Reliability Standards development process. The Commission suggested that NERC could address the Commission's concern by deleting the phrase, "e.g., load greater than studied."

NERC Proposal

8. NERC proposes to address the Commission's concern with the phrase "load greater than studied" by revising FAC-011-1 to remove the phrase from Requirement R2.3.2. NERC states that because the phrase served as an example, its removal does not materially change the requirement or the Reliability Standard. NERC's proposed FAC-011-2 therefore omits the relevant phrase.

Commission Proposal

9. The Commission proposes to approve NERC's proposed removal of the phrase "e.g., load greater than studied" from Requirement R2.3.2 of FAC-011-2. NERC's revision in FAC-011-2 appears reasonable and does not appear to change or conflict with the stated requirements set forth in the version one Reliability Standards approved in Order No. 705. NERC's revision therefore appears just, reasonable, not unduly discriminatory or preferential, and in the public interest.

10. While NERC describes the phrase "load greater than studied" as an example and states that its removal does not materially change the requirement, the Commission notes that Order No. 705 found that the operating conditions referred to in sub-Requirement R2.3.2 are exacerbating circumstances that are distinct from the actual contingency to be addressed that is referred to in Requirement R2.3. We stated that this did not support treating "load greater

than studied" as a contingency.⁹ As we stated in Order No. 705, correcting for load forecast error is not accomplished by treating the error as a contingency, but is addressed under other Reliability Standards.¹⁰

B. Cascading Outages

11. With the version one FAC Reliability Standards, NERC proposed to add the term "Cascading Outages" to its glossary. In Order No. 705, the Commission noted that, although the glossary did not include a definition of Cascading Outages, it included an approved definition of Cascading, which seemed to describe the same concept. The Commission remanded NERC's proposed definition of Cascading Outages because NERC did not describe either the need for two definitions that seem to address the same matter or the variations between the two. The Commission also raised specific concerns with NERC's proposed definition of Cascading Outages. However, the Commission allowed NERC to file a revised definition that addresses the Commission's concerns.

NERC Proposal

12. NERC states that it is not proposing a revised definition of Cascading Outage. Instead, NERC proposes to address the Commission's concern by removing the term from the proposed FAC Reliability Standards. NERC states that its Board of Trustees withdrew its approval of the term at its February 12, 2008 meeting. NERC further states that the drafting team reviewed the term Cascading Outage relative to the term Cascading, a term in the approved NERC Glossary of Terms and indicated there were no intended material differences in the terms. NERC therefore removed the term Cascading Outage from the proposed FAC-010-2 and FAC-011-2 Reliability Standards and replaced with it with the term Cascading.

Commission Proposal

13. The Commission proposes to approve NERC's proposed removal of the term Cascading Outage from its FAC Reliability Standards. NERC's proposed revisions to FAC-010-2 and FAC-011-2 appear reasonable and do not appear to change or conflict with the stated requirements set forth in the version one

⁴ Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 72 FR 16416, FERC Stats. & Regs. ¶ 31,242, reh'g denied, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁵ Facilities Design, Connections and Maintenance Reliability Standards, Order No. 705, 73 FR 1770 (Jan. 9, 2008), 121 FERC ¶ 61,296 (2007).

⁶ NERC designates the version number of a Reliability Standard as the last digit of the Reliability Standard number. Therefore, version one Reliability Standards end with "1" and version two Reliability Standards end with "2."

⁷ Reliability Standards cannot become effective before the effective date of a Commission order approving them. See, e.g., Mandatory Reliability Standards for Critical Infrastructure Protection, Order No. 706, 73 FR 7368 at n.190 (Feb. 7, 2008), 122 FERC ¶ 61,010 (2008).

⁸ Order No. 705, 121 FERC ¶ 61,296 at P 70.

⁹ Id. P 69.

¹⁰ Id. P 68. For instance, we stated that "transmission operators are required to modify their plans whenever they receive information or forecasts that are different from what they used in their present plans. Furthermore, variations in weather forecasts that result in load forecast errors are more properly addressed through operating reserve requirements." Id.

Reliability Standards approved in Order No. 705. NERC's revisions therefore appear just, reasonable, not unduly discriminatory or preferential, and in the public interest.

C. Loss of Consequential Load

14. Requirement R2.3 of FAC-010-1 provided that the system's response to a single contingency may include, *inter alia*, "planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area."¹¹ In response to a question raised by the Commission, NERC clarified that the provision in FAC-010-1, Requirement R2.3 is limited to loss of load that is directly connected to the facilities removed from service as a direct result of the contingency, *i.e.*, consequential load loss.

15. In Order No. 705, the Commission reiterated its holding that addressed similar language on loss of load in Order No. 693, regarding Reliability Standard TPL-002-0. In Order No. 693, the Commission noted that "allowing for the 30 minute system adjustment period, the system must be capable of withstanding an N-1 contingency, with load shedding available to system operators as a measure of last resort to prevent cascading failures."¹² Order No. 693 directed the ERO to clarify the planning Reliability Standard TPL-002-0 accordingly. The Commission reached the same conclusion in Order No. 705. In Order No. 705, the Commission approved Reliability Standard FAC-010-1, Requirement R2.3 and directed the ERO to ensure that the clarification developed in response to Order No. 693 is made to the FAC Reliability Standards as well.¹³

NERC's Proposal

16. NERC suggests that the revisions to the term "loss of consequential load" are best addressed in the modifications being made to the transmission planning (TPL) family of Reliability Standards in its Project 2006-02 Assess Transmission Future Needs and Develop Transmission Plans. NERC reiterates its position that the TPL Reliability Standards define acceptable system performance response and serve as the foundation for the FAC family of Reliability Standards. NERC states that the term "loss of consequential load" is intrinsic to the scope of Project 2006-02. According to NERC, the drafting

team has already proposed a definition for the term to be presented for approval for inclusion in NERC's Glossary of Terms.¹⁴ NERC states that this approach will provide the clarity needed.

Commission Proposal

17. The Commission proposes to allow the ERO to address revisions to the term "loss of consequential load" in the modification being made to the TPL Reliability Standards. Such revisions should be consistent with the Commission's prior determinations in Order Nos. 693 and 705.¹⁵ The Commission finds that FAC-010-2 and FAC-011-2 are clearly understood as written and clarified in Order No. 705, including its holding with respect to "loss of consequential load,"¹⁶ and that NERC's proposal to deal with "loss of consequential load" in a more-related project is appropriate.

D. Violation Severity Levels

18. In the event of a violation of a Reliability Standard, NERC will establish the initial value range for the corresponding base penalty amount. To do so, NERC will assign a violation risk factor for each requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the requirement on the reliability of the Bulk-Power System. In addition, NERC will define up to four violation severity levels—Lower, Moderate, High and Severe—as measurements for the degree to which the requirement was violated in a specific circumstance.

19. In Order No. 705, the Commission approved 63 of NERC's 72 proposed violation risk factors and directed NERC to file violation severity level assignments before the version one FAC Reliability Standards become effective.¹⁷ Subsequently, NERC developed violation severity levels for each requirement of Reliability Standard, as measurements for the degree to which the requirement was violated in a specific circumstance.

20. On June 19, 2008, the Commission issued an order approving the violation severity level assignments filed by NERC for the 83 Reliability Standards

approved in Order No. 693.¹⁸ In that order, the Commission offered four guidelines for evaluating the validity of the violation severity levels, and ordered a number of reports and further compliance filing to bring the remainder of NERC's violation severity levels into compliance with the Commission's guidelines. The four guidelines are: (1) Violation severity level assignments should not have the unintended consequence of lowering the current level of compliance; (2) violation severity level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties; (3) violation severity level assignments should be consistent with the corresponding requirement; and (4) violation severity level assignments should be based on a single violation, not a cumulative number of violations.¹⁹ The Commission found that these guidelines will provide a consistent and objective means for assessing, *inter alia*, the consistency, fairness and potential consequences of violation severity level assignments. The Commission noted that these guidelines were not intended to replace NERC's own guidance classifications, but rather, provide an additional level of analysis to determine the validity of violation severity level assignments.

NERC Proposal

21. NERC states that it developed a full suite of violation severity levels for FAC-010-2, FAC-011-2 and FAC-014-2. NERC notes that it developed these violation severity levels prior to the issuance of the Violation Severity Level Order.²⁰ NERC requests that the Commission accept its violation severity levels for the version two FAC Reliability Standards even though it has not yet assessed their validity using the four new guidelines established in the Violation Severity Level Order. NERC states that it is committed to assessing the violation severity levels for the revised FAC Reliability Standards in the six-month compliance filing required by the Violation Severity Level Order.²¹

¹⁸ *North American Electric Reliability Corp.*, 123 FERC ¶ 61,284 (2008) (Violation Severity Level Order). NERC had not, at that time, submitted violation severity levels for the FAC Reliability Standards at issue in this proceeding.

¹⁹ *Id.* P 17.

²⁰ NERC June 30, 2008 Filing, Docket No. RM07-3-000 at 5.

²¹ *Id.* (citing Violation Severity Level Order, 123 FERC ¶ 61,284 at P 42 (requiring NERC, within six months from the issuance of the Violation Severity Level Order, to conduct a review of the approved violation severity levels pursuant to the Commission guidelines, and submit a compliance filing)).

¹¹ Identical language appears in FAC-011-1, Requirement R2.3.

¹² Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1788.

¹³ Order No. 705, 121 FERC ¶ 61,296 at P 53.

¹⁴ On August 14, 2007, the Reliability Standards drafting team posted for comment a draft of Reliability Standard TPL-001-1. NERC, *Draft 2 TPL-001-1, Transmission System Planning Performance Requirements Posted for 45-day Comment Period*, Project 2006-02, at 2 (2008), available at: <http://www.nerc.com/filez/standards/Assess-Transmission-Future-Needs.html>.

¹⁵ See Order No. 705, 121 FERC ¶ 61,296 at P 53; Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1788 & n.461.

¹⁶ See *id.* P 53.

¹⁷ Order No. 705, 121 FERC ¶ 61,296 at P 137.

NERC did not submit violation risk factors for these version two FAC Reliability Standards.

Commission Proposal

22. The Commission proposes to approve, with modification, NERC's proposed violation severity levels for FAC-010-2, FAC-011-2 and FAC-014-2. While we appreciate that NERC assigned its proposed violation severity levels before the Commission established the four guidelines for evaluating the validity of the violation severity levels, we find that NERC's proposed violation severity levels would not meet our guidelines. We therefore propose the following modifications to the violation severity levels to form a complete set of violation severity levels in this NOPR. We note that NERC has committed to assessing the violation severity levels in the compliance filing required by the Violation Severity Level Order. Our proposals here do not preclude NERC from including an assessment of its FAC violation severity levels in its six-month evaluation, and we encourage NERC to do so. If, however, NERC does not include an assessment of its FAC violation severity levels in its six-month evaluation, the Commission proposes to direct the ERO to submit an assessment of the FAC violation severity levels within six months of the effective date of the Final Rule in this docket.

23. As drafted, some of NERC's proposed violation severity levels do not meet the Commission's guidelines established in the Violation Severity Level Order. Of the violation severity levels submitted by NERC, FAC-010-2 Requirements R1, R3, R4 and R5; FAC-011-2 Requirement R4; and FAC-014-2 Requirement R5 are consistent with the Commission violation severity level guidelines and only minor edits are proposed for clarity. The Commission therefore proposes to approve modified violation severity levels that are consistent with our guidelines.

24. The Commission is concerned with several of the proposed violation severity levels and proposes modifications. For example, as proposed by NERC, it is difficult to discern which conditions trigger which violation severity level assigned to FAC-010-2 Requirement R4. The Commission therefore proposes to direct the ERO to make modifications to clarify those conditions without changing the substance of the violation severity levels. The Commission also proposes to direct the ERO to modify the violation severity levels assigned to FAC-011-2 Requirement R1 to make them consistent with the violation severity

levels proposed for FAC-010-2 Requirement R1. This uniformity will assist in the compliance and enforcement of these standards because it is logical that nearly identical requirements have nearly identical violation severity level structures.

25. NERC submitted violation severity levels for Requirement R2 of FAC-010-2 and Requirement R2 of FAC-011-2. In Order No. 705, the Commission found that Requirement R2 of FAC-010-1 and Requirement R2 of FAC-011-1, without their sub-requirements, include no required performance or outcome.²² As such, no violation severity levels need to be assigned to these requirements. The Commission therefore proposes to delete the proposed violation severity levels for Requirement R2.

26. As proposed by NERC, Requirement R3 of FAC-011-2 is assigned a "Severe" violation severity level if the reliability coordinator's methodology for determining SOLs is missing a description of *three or more* of the sub-requirements ranging from R3.1 to R3.7. At the same time, NERC assigns a "High" violation severity level if the reliability coordinator's methodology for determining SOLs includes a description for all but *three* sub-requirements within the same range. Therefore, if a reliability coordinator's methodology for determining SOLs is missing a description of three sub-requirements, it could be assigned both a "High" and a "Severe" violation severity level. To eliminate this overlap, the Commission proposes to direct the ERO to assign a "Severe" violation severity level to Requirement R3 of FAC-011-2 where the reliability coordinator is missing a description of *four* or more sub-requirements R3.1 to R3.7 from its methodology for determining SOLs.

27. Requirements R1 through R4 of FAC-014-2 address the development of SOLs and IROLs consistent with the methodologies outlined in FAC-010-2 and FAC-011-2. NERC proposes to assign violation severity levels to these requirements based on a quartile division of the total number of inconsistencies between the assigned SOLs and the SOLs that would be produced using the methodologies outlined in FAC-010-2 and FAC-011-2. For example, NERC proposes to assign a "Lower" violation severity level where 1 to 25 percent of SOLs are inconsistent with the applicable entity's SOL methodology. The Commission believes that each time a SOL is inconsistent with the applicable entity's SOL methodology, it is a violation of the

Reliability Standards. By contrast, NERC's proposed violation severity levels are based on multiple inconsistent SOLs. The Commission's fourth guideline for evaluating violation severity levels makes clear that violation severity level assignments should be based on a single violation, not on a cumulative number of violations. To remedy this deficiency, the Commission proposes to direct the ERO to modify its violation severity levels for FAC-014-02 Requirements R1 through R4 based on the percentage of deviation from the SOL methodology for each violation.

28. Requirement R6 of FAC-014-2 requires the planning authority to identify the subset of multiple contingencies (if any), from Reliability Standard TPL-003 that result in stability limits. However, the proposed violation severity levels for Requirement R6 of FAC-014-2 do not identify a situation where the planning authority fails to provide a complete subset of contingencies to the reliability coordinator. This omission could result in the reliability coordinator not having the information it needs for its situational awareness of exceeding SOLs and IROLs that impact the reliable operation of the Bulk-Power System. The Commission therefore proposes to direct the ERO to add the following "Lower" violation severity level: "The Planning Authority failed to provide a complete subset of contingencies to the reliability coordinator in accordance with R6." The Commission also proposes to direct the ERO to reassign NERC's current "Lower" violation severity level as the new "Moderate" violation severity level to emphasize the need to notify the reliability coordinator.²³ The revisions proposed here would make the violation severity level assignments for Requirement R6 consistent with NERC's own guidelines for the development of violation severity levels related to communication or coordination requirements.²⁴

29. The Commission has directed NERC to develop violation severity levels for each requirement and sub-requirement of each Reliability

²³ NERC did not propose a "Moderate" violation severity level for requirement R6.

²⁴ NERC, *Violation Severity Level Guidelines Criteria*, Project 2007-23 at 19 (2008), available at: http://www.nerc.com/docs/standards/sar/VSLDT_Guidelines_Final_Draft_08Jan08.pdf. The NERC Guidelines indicate that a Moderate violation severity level should be selected when the responsible entity's coordination/communication is non-compliant with respect to at least one significant element within the requirement. In this case, the significant element is the failure to notify the Reliability Coordinator.

²² Order No. 705, 121 FERC ¶ 61,296 at P 159.

Standard.²⁵ NERC did not propose any violation severity level assignments for sub-requirements. The Commission therefore proposes to direct the ERO to assign binary violation severity levels for all of the proposed sub-requirements.²⁶ In Order No. 705, the Commission found that the binary approach is appropriate for certain violation severity level assignments.²⁷ In this instance, the binary approach is appropriate because the violation severity level of the base requirement is established by whether a sub-requirement is violated or not, not to what extent a sub-requirement is violated. Thus, the proposed binary requirements satisfy guideline three, which calls for consistency between the violation severity level assignments and their corresponding requirements. For example, FAC-010-2 Requirement R1.1 states that the planning authority's SOL methodology shall "[b]e applicable for developing SOLs used in the planning horizon."²⁸ NERC did not propose any violation severity levels for this sub-requirement, therefore the Commission proposes a binary severe violation severity level that would be triggered when the planning authority SOL methodology is *not* applicable for developing SOLs in the planning horizon. This binary approach for sub-requirements provides clear criteria to determine a violation of the sub-requirement. The Commission took a similar approach to the sub-requirements applicable to the WECC regional differences.

30. The complete set of the Commission's proposals is included in Attachment A to this order. The Commission proposes to direct the ERO to file the revised violation severity levels within 30 days of the Final Rule in this proceeding.

31. Finally, the Commission notes that NERC did not submit violation risk factors for the version two FAC Reliability Standards. In Order No. 705, the Commission approved the majority of NERC's proposed violation risk factors for the version one FAC Reliability Standards.²⁹ On April 1, 2008, NERC filed revised violation risk factors for the version one FAC Reliability Standards. These were accepted by delegated authority on May 29, 2008. The Commission proposes to

direct the ERO to apply those same violation risk factors to the version two FAC Reliability Standards approved in the Final Rule in this proceeding.

E. Western Interconnection Regional Differences

32. Although NERC submitted requirements for FAC-010-2 and FAC-011-2 that address the Western Interconnection regional difference, NERC did not submit violation severity levels or violation risk factors for these requirements. In Order No. 705, the Commission approved version one of the FAC Reliability Standards and directed WECC to develop and submit violation risk factors and violation severity levels that are applicable to the Western Interconnection regional difference.³⁰ The Commission directed WECC to file its violation risk factors and violation severity levels no later than the effective date of the applicable Reliability Standard. FAC-010-1 became effective on July 1, 2008 and FAC-011-1 will become effective on October 1, 2008. To remedy this deficiency, the Commission offers proposed modifications to the violation severity level assignments assigned to FAC-010-2 and FAC-011-2 that address the Western Interconnection regional differences. The Commission's proposed modifications are included in Attachment A to this order. Consistent with our decision in Order No. 705, the Commission proposes to direct WECC to apply the NERC violation risk factors to the Western Interconnection regional difference until after WECC develops its own and they are approved by the ERO and the Commission.³¹ We note that WECC is still obligated to comply with the Commission's directives in Order No. 705 to file violation risk factors and violation severity levels addressing the Western Interconnection regional difference.

III. Information Collection Statement

33. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.³² The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.³³ As stated above, the Commission previously approved, in Order No. 705, each of the Reliability Standards that are the subject of the current rulemaking. The modifications

to the Reliability Standards are minor; therefore, they do not add to or increase entities' reporting burden. Thus, the modified Reliability Standards do not materially affect the burden estimates relating to the earlier version of the Reliability Standards presented in Order No. 705.

Title: Version Two Facilities Design, Connections and Maintenance Reliability Standards.

Action: Proposed Collection.

OMB Control No.:

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This NOPR proposes to approve three modified Reliability Standards that pertain to facilities design, connections and maintenance. The Reliability Standards will require planning authorities and reliability coordinators to establish methodologies to determine system operating limits (SOLs) for the Bulk-Power System in the planning and operation horizons. This NOPR proposes to find the Reliability Standards and interpretations just, reasonable, not unduly discriminatory or preferential, and in the public interest.

34. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426, Tel: (202) 502-8415, Fax: (202) 273-0873, e-mail: michael.miller@ferc.gov, or by contacting: Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902-0244), Washington, DC 20503, Tel: (202) 395-4650, Fax: (202) 395-7285, e-mail: oir_submission@omb.eop.gov.

IV. Environmental Analysis

35. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³⁴ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not

²⁵ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,248, order on clarification, 120 FERC ¶ 61,239 (2007).

²⁶ Binary requirements of Reliability Standards define compliance in terms of "pass" or "fail."

²⁷ Order No. 705, 121 FERC ¶ 61,296 at P 24.

²⁸ NERC June 30, 2008 Filing, Docket No. RM07-3-000 ex. A.

²⁹ Order No. 705, 121 FERC ¶ 61,296 at P 137.

³⁰ *Id.* P 146.

³¹ *Id.*

³² 5 CFR 1320.11.

³³ 44 U.S.C. 3507(d).

³⁴ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

substantially change the effect of the regulations being amended.³⁵ The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

36. The Regulatory Flexibility Act of 1980 (RFA)³⁶ generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (See 13 CFR 121.201). For electric utilities, a firm is small if, including affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the minor modifications and interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

VI. Comment Processing

37. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 24, 2008. Comments must refer to Docket No. RM08-11-000, and must include the commenters' name, the organization they represent, if applicable, and their address in their comments.

38. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. Commenters filing electronically should not make a paper filing. Service of rulemaking comments is not required.

39. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the

Commission, 888 First Street, NE., Washington, DC 20426.

40. All Comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

41. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

42. From FERC's Home Page on the Internet, this information is available on eLibrary. The Full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

43. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or (202) 502-6652 (e-mail at ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659 (e-mail at public.reference@ferc.gov).

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-25051 Filed 10-22-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 66

RIN 1219-AB41

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearing; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold an

additional public hearing on its proposed rule to amend the existing metal and nonmetal standards for the possession and use of intoxicating beverages and narcotics and make the new standard applicable to all mines. The proposed rule would also require those who violate the prohibitions to be removed from the performance of safety-sensitive job duties until they successfully complete the recommended treatment and their alcohol- and drug-free status is confirmed by a return-to-duty test.

DATES: All comments must be received by midnight Eastern Daylight Savings Time on November 10, 2008.

MSHA will hold a public hearing on October 28, 2008. The **SUPPLEMENTARY INFORMATION** section of this notice includes details of the hearing.

ADDRESSES: Comments must be clearly identified with "RIN 1219-AB41" and may be sent by any of the following methods:

(1) Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) Electronic mail: zzMSHA-comments@dol.gov. Include "RIN 1219-AB41" in the subject line of the message.

(3) Facsimile: 202-693-9441. Include "RIN 1219-AB41" in the subject line of the message.

(4) Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

(5) Hand Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at <http://www.msha.gov> under the Rules and Regs link. MSHA will post all comments on the Internet without change, including any personal information provided.

Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey,
patricia.silvey@dol.gov (E-mail), 202-693-9440 (Voice).

SUPPLEMENTARY INFORMATION:

I. Background

On September 8, 2008 (73 FR 52136), MSHA published a proposed rule in the **Federal Register** that would amend the existing metal and nonmetal standards

³⁵ 18 CFR 380.4(a)(2)(ii).

³⁶ 5 U.S.C. 601-12.

concerning the use of intoxicating beverages and narcotics and would make the new standard applicable to all mines. On September 26, 2008 (73 FR 55800), MSHA published a document extending the comment period. The proposed rule would designate the substances that cannot be possessed on mine property or used while performing safety-sensitive job duties, except when used according to a valid prescription. Mine operators would be required to establish an alcohol- and drug-free mine program, which includes a written policy, employee education, supervisory training, alcohol- and drug-testing for miners that perform safety-sensitive job

duties and their supervisors, and referrals for assistance for miners and supervisors who violate the policy. The proposed rule would also require those who violate the prohibitions to be removed from the performance of safety-sensitive job duties until they successfully complete the recommended treatment and their alcohol- and drug-free status is confirmed by a return-to-duty test.

MSHA held a public hearing on October 14, 2008 and persons made presentations via Webcast in Washington, DC, Pittsburgh, PA, and Englewood, CO. Additionally, persons made presentations via audio in

Birmingham, AL, Beckley, WV, Madisonville, KY, and Price, UT. In response to further requests, MSHA is holding an additional hearing.

II. Public Hearing

MSHA will hold a public hearing on the proposed rule. The public hearing will begin at 9 a.m. Eastern Daylight Savings Time (EDST). Persons can make presentations via audio at three locations. The hearing will end at 5 p.m. EDST, or after the last speaker speaks. The hearing will be held on the following date at the locations and times indicated:

Date	Location	Contact information
October 28, 2008	Via Audio: 9:00 a.m. Eastern Daylight Savings Time. The National Mine Health and Safety Academy, 1301 Airport Road, Beckley, WV 25813.	Office of Standards, Regulations and Variances, 202-693-9440.
October 28, 2008	Via Audio: 8:00 a.m. Central Daylight Savings Time. Sheraton Birmingham Hotel, 2101 Richard Arrington Jr. Blvd. N, Medical Forum Auditorium, Birmingham, Alabama 35203.	Office of Standards, Regulations and Variances, 202-693-9440.
October 28, 2008	Via Audio: 8:00 a.m. Central Daylight Savings Time. United Steelworkers Local Union #1938, 307 First Street North, Virginia, Minnesota 55792.	Office of Standards, Regulations and Variances, 202-693-9440.

The MSHA panel will be located at the Agency's Arlington headquarters at 1100 Wilson Boulevard, 25th floor in Arlington, Virginia. Persons will need an ID to enter all locations and may be subject to a security check.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Requests to speak at the hearing should be made prior to the hearing date. Requests to speak may be made by telephone (202-693-9440), facsimile (202-693-9441), electronic mail zzMSHA-comments@dol.gov or mail (MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939). Because members of the public will be able to make oral presentations via audio at several locations, for scheduling purposes, MSHA strongly encourages all parties wishing to speak to notify the Agency in advance.

Any unallocated time at the end of the hearing will be made available to

persons making same-day requests to speak. Same-day requestors will speak in the order that they sign in at the hearing. At the discretion of the presiding official, the time allocated to each speaker for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearing will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply. The hearing panel may ask questions of speakers. Speakers may ask questions of the hearing panel. MSHA will make a transcript of the hearing, post it on MSHA's Web site <http://www.msha.gov>, and include it in the rulemaking record. A link to the complete audio recording will be placed on MSHA's Web site several days after the hearing.

MSHA will accept post-hearing written comments and data for the record from any interested party, including those not presenting oral statements, by midnight Eastern

Daylight Savings Time on November 10, 2008.

Dated: October 20, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E8-25380 Filed 10-21-08; 11:15 am]

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Copyright Office

37 CFR Part 201

[Docket No. RM 2008-9]

Fees

Correction

In proposed rule document E8-24269 beginning on page 60658 in the issue of Tuesday, October 14, 2008, make the following correction:

On page 60661, the table is corrected in part as follows:

Registration, recordation, and related services					Current fees	Proposed fees
*	*	*	*	*	*	*
Special Services						
(1) Service charge for deposit account overdraft					\$150	\$165
(2) Service charge for dishonored deposit account replenishment check					75	85
(3) Service charge for an uncollectible or non-negotiable check ¹					N/A	25
(4) Appeals:						

Registration, recordation, and related services	Current fees	Proposed fees
(i) First appeal	250	250
Additional claim in related group	25	25
(ii) Second appeal	500	500
Additional claim in related group	25	25
(5) Secure test processing charge (per hour)	150	165
(6) Copying of Copyright Office records by staff:		
Photocopy (b & w, 8½ x 11) (per page, minimum \$12)	0.50	0.50
Photocopy (b & w, 11 x 17) (per page, minimum \$12)	N/A	1
Photocopy (color, 8½ x 11) (per page, minimum \$12)	1.50	2
Photocopy (color, 11 x 17) (per page, minimum \$12)	N/A	4
Photograph (Polaroid)	15	15
Photograph (digital)	45	45
Slide	3	3
Audiocassette (first 30 minutes)	75	75
Additional 15 minute increments	20	20
Videocassette (first 30 minutes)	75	75
Additional 15 minute increments	25	25
CD or DVD	50	100
Zip or floppy disk	100	100
(7) Special handling fee for a claim	685	760
Each additional claim using the same deposit	50	50
(8) Special handling fee for recordation of a document	435	480
(9) Handling fee of extra deposit copy for certification	45	45
(10) Full-term retention of a published deposit	425	470
(11) Expedited search and report service (surcharge, per hour)	400	445
(12) Expedited Records Research & Certification services (surcharge, per hour)	240	265
(13) Notice to Libraries and Archives	50	50
Each additional title	20	20
(14) Fed Ex Service	35	40
(15) Delivery of documents via facsimile (per page, 7 page maximum)	1	1
Licensing Division Services		
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) (single title)	12	105
Additional titles (per group of 10 titles)	N/A	20
(2) Filing Fee for Recordation of Licensing Agreements under 17 U.S.C. 118	125	140
(3) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States	50	50
(4) Initial Notice of Digital Transmission of Sound Recording (17 U.S.C. 114)	20	25
Amendment of 17 U.S.C. 114 Notice	20	25
(5) Statement of Account Amendment (Cable Television Systems and Satellite Carriers, 17 U.S.C. 111 and 119)	95	100
(6) Statement of Account Amendment (Digital Audio Recording Devices or Media, 17 U.S.C. 1003)	95	100
(7) Photocopy made by staff (b & w) (per page, minimum \$12)	0.50	0.50
(8) Search, per hour (minimum 1 hour)	150	165
(9) Certification of Search Report	150	165

¹ New item; fee not currently listed in 37 CFR 201.3(d).

[FR Doc. Z8-24269 Filed 10-22-08; 8:45 am]
BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 158 and 161

[EPA-HQ-OPP-2008-0110; FRL-8388-7]

Pesticides; Data Requirements for Antimicrobial Pesticides; Notice of Public Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental information about public workshop; availability of web conference.

SUMMARY: This notice provides supplemental information to the notice

published on October 10, 2008, that announced the scheduling of a November 6, 2008, public workshop to explain the provisions of its recently proposed rule to update and revise the data requirements for registration of antimicrobial pesticides. EPA has arranged for a web conference for those persons who cannot attend in-person the public workshop. The workshop is intended to provide an opportunity for members of the public to ask questions about the proposed rule and seek any clarification they believe may assist them in submitting comments to the docket for the proposed rule. Any person wishing to comment on the proposed rule must submit any comments to the docket within the timeframe set forth in the Notice of Proposed Rulemaking.

DATES: The meeting will be held on November 6, 2008, from 8:30 a.m. to 4 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), First Floor Conference Center, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

To facilitate the Agency's planning, your intention to participate in the web conference for the Antimicrobials Workshop, may be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Amaris Johnson, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-9542; fax number: (703) 305-5884; e-mail address: johnson.amaris@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this Action Apply to Me?**

You may be affected by this action if you are a producer of pesticide products (NAICS 32532), antifoulants (NAICS 32551), antimicrobial pesticides (NAICS 32561) or wood preservatives (NAICS 32519), importers of such products, or any person or company who seeks to register an antimicrobial, antifoulant coating, ballast water treatment, or wood preservative pesticide or to obtain a tolerance for such a pesticide. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, please contact Norm Cook, Chief of the Risk Assessment and Science Support Branch in the Antimicrobials Division of the Office of Pesticide Programs at (703) 308-8253 or via email, cook.norm@epa.gov.

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 ID number EPA-HQ-OPP-2008-0110. 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 22202. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>.

II. Background

EPA is convening a public workshop to explain the proposed revisions to the data requirements for the registration of antimicrobial pesticides. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), anyone seeking to register a pesticide product is required to provide information to EPA to demonstrate that their products can be used without posing “unreasonable adverse effects on the environment” as defined by FIFRA section 2(bb).

The public workshop will include presentations by staff from the Antimicrobial, and the Field and External Affairs Divisions of the Office of Pesticide Programs. The proposed revisions are directed at antimicrobial pesticides, not conventional pesticides, biochemical and microbial pesticides or product performance data requirements. Nonetheless, all interested parties are welcome and may benefit from the discussions since two areas not addressed in the conventional pesticide (72 FR 60934, October 26, 2007) (FRL-8106-5), or biochemical and microbial pesticide (72 FR 60988, October 26, 2007) (FRL-8109-8) data requirements final rules are addressed in the antimicrobial data requirements proposed rule. These two areas are: Down-the-drain data requirements and the Program’s use of structure-activity-relationship (SAR).

During the workshop, persons in attendance will be able to ask questions regarding the proposed rule and/or material being presented and seek any clarification they believe may assist them in submitting comments to the docket for the proposed rule. Any person wishing to comment on the proposed rule must submit any comments to the docket within the timeframe set forth in the Notice of Proposed Rulemaking.

The proposed revisions were issued in the **Federal Register** of October 8, 2008 (73 FR 59382) (FRL-8358-2). A 90-day comment period will end on January 6, 2008. The notice of the workshop was published on October 10, 2008 (73 FR 60211) (FRL-8383-6). A limited number of copies of the proposed rule will be available at the workshop. Attendees are encouraged to access the electronic version of the proposed rule from the [regulations.gov](http://www.regulations.gov) website under Docket ID number EPA-HQ-OPP-2008-0110.

The Agency has arranged for a web conference to serve as an alternate means of participating in the workshop. You can join the web conference

starting at 8 a.m. on November 6, 2008. To access the web conference go to <http://portal.epa.gov/webconference>, and complete the Join Conference box on the right of the screen using the following information: Conference ID: 309742 and Conference Key: 12345. Type in your full name and then select: Join Conference. For the audio portion call (866) 299-3188 and then use code 7033056304#. Additional information on web conferencing can be accessed from the [regulations.gov](http://www.regulations.gov) website under Docket ID number EPA-HQ-OPP-2008-0110.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 2008.

Martha Monell,

Acting Director, Office of Pesticide Programs.
[FR Doc. E8-25350 Filed 10-22-08; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 67**

[Docket No. FEMA-B-1013]

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 January 21, 2009.

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-1013, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151, or (e-mail) bill.blanton@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

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

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

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean

that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Graves County, Kentucky, and Incorporated Areas				
Camp Creek	Approximately 2,000 feet upstream KY-348	None	+352	Graves County.
	Approximately 800 feet upstream Railroad	None	+370	
Kess Creek	At Paris Road	None	+456	Graves County, City of Mayfield.
	Approximately 750 downstream of South 10th Street	None	+470	
Obion Creek	Approximately 2,100 feet downstream Railroad (West County Boundary).	None	+378	Graves County.
	At US-45	None	+410	

* 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 Mayfield

Maps are available for inspection at 211 East Broadway, Mayfield, KY 42066.

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

Graves County

Maps are available for inspection at 101 East South Street, Mayfield, KY 42066.

Cocke County, Tennessee, and Incorporated Areas

Clear Creek	Approximately 2.2 miles upstream of the confluence of French Broad River.	None	+1030	Unincorporated Areas of Cocke County.
	Approximately 927 feet upstream of the confluence of French Broad River.	+1029	+1030	
French Broad River/Douglas Lake.	Approximately 4.7 miles downstream of U.S. Highway 25 E.	None	+1002	Unincorporated Areas of Cocke County.
	Approximately 1.5 miles upstream of the confluence of Pigeon River.	+1016	+1014	
Haney Branch	At the confluence of French Broad River	None	+1010	Unincorporated Areas of Cocke County.
	Approximately 1,290 feet upstream of Wynn Way	None	+1010	
McCowan Creek	At the confluence of French Broad River	None	+1002	Unincorporated Areas of Cocke County.
	Approximately 1.1 miles upstream of the confluence of French Broad River.	None	+1002	
Nolichucky River	Approximately 1.2 miles upstream of Hale Road	None	+1022	Unincorporated Areas of Cocke County.
	Approximately 1.1 miles upstream of Glendale Road	None	+1044	

* 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 Cocke County**

Maps are available for inspection at Cocke County Courthouse, 111 Court Avenue, Rm 112, Newport, TN 37821.

Buffalo County, Wisconsin, and Incorporated Areas

Buffalo River	Approximately 7,700 feet downstream of the Eau Claire Street bridge.	None	+777	Unincorporated Areas of Buffalo County.
	Approximately 7,000 feet downstream of the Eau Claire Street bridge.	None	+777	
Mississippi River	Approximately 4.8 miles downstream of State Highway 54.	+658	+657	City of Alma, City of Buffalo, City of Fountain City, Unincorporated Areas of Buffalo County, Village of Cochrane, Village of Nelson.
	Approximately 2.1 miles upstream of State Highway 25 ..	+681	+680	
Peeso Creek	Approximately 3,400 feet upstream of the Washington Street Bridge.	None	+822	Unincorporated Areas of Buffalo County.
	Approximately 4,200 feet upstream of the Washington Street Bridge.	None	+825	

* 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 Alma**

Maps are available for inspection at City Hall, 314 North Main Street, Alma, WI 54610.

City of Buffalo

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

Maps are available for inspection at Municipal Building, 245 East 10th Street, Buffalo City, WI 54622.

City of Fountain City

Maps are available for inspection at City Hall, 42 North Main Street, Fountain City, WI 54629.

Unincorporated Areas of Buffalo County

Maps are available for inspection at Buffalo County Courthouse, 407 South 2nd Street, Alma, WI 54610.

Village of Cochrane

Maps are available for inspection at Village Hall, 102 East 5th Street, Cochrane, WI 54622.

Village of Nelson

Maps are available for inspection at Village Hall, 105 South Main Street, Nelson, WI 54756.

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

Dated: October 10, 2008.

Michael K. Buckley,

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

[FR Doc. E8-25264 Filed 10-22-08; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-B-1012]

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 January 21, 2009.

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-1012, 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
City of Campbell, Ohio					
Ohio	City of Campbell	Mahoning River	Approximately 1,400 feet upstream of Bridge Road.	None	+827
			Approximately 7,700 feet upstream of Bridge Road.	None	+831
			Approximately 2,700 feet downstream of Center Street.	None	+833
			Approximately 2,000 feet downstream of Center Street.	None	+833

* 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 Campbell**

Maps are available for inspection at Administration and Finance Office, 351 Tenney Avenue, Campbell, OH 44405.

City of Radford, Virginia

Virginia	City of Radford	Plum Creek	Approximately 300 feet downstream of U.S. Highway 11.	+1738	+1739
			Approximately at the upstream corporate limits for the City of Radford.	+1768	+1782

* 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 Radford**

Maps are available for inspection at City of Radford Engineering Department, 619 Second Street, Radford, VA 24141.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Hancock County, Illinois, and Incorporated Areas				
Mississippi River	From the Hancock/Adams county boundary at River Mile 347.4; approximately 4 miles upstream of Lock and Dam No. 20.	+495	+494	Unincorporated Areas of Hancock County, City of Dallas City, City of Hamilton, City of Nauvoo, City of Warsaw, Village of Pontoosuc.
	To the Hancock/Henderson county boundary at River Mile 390.85, approximately Oak Street in Dallas City.	+528	+529	

* National Geodetic Vertical Datum.

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

+ 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 Dallas City

Maps are available for inspection at 261 Oak Street, P.O. Box 454, Dallas City, IL 62330.

City of Hamilton

Maps are available for inspection at Hamilton City Hall, 1010 Broadway Street, Hamilton, IL 62341.

City of Nauvoo

Maps are available for inspection at 60 North Bluff Street, P.O. Box 85, Nauvoo, IL 62354.

City of Warsaw

Maps are available for inspection at 210 North Fourth Street, P.O. Box 12, Warsaw, IL 62379.

Unincorporated Areas of Hancock County

Maps are available for inspection at 500 Main Street, P.O. Box 444, Carthage, IL 62321.

Village of Pontoosuc

Maps are available for inspection at Pontoosuc Village Hall, 200 Mustard Street, Pontoosuc, IL 62368.

Thurston County, Nebraska, and Incorporated Areas

Logan Creek	Approximately 2.20 miles downstream of State Highway 94.	None	+1318	Unincorporated Areas of Thurston County, Omaha Indian Tribe.
	Approximately 1.65 miles upstream of State Highway 94.	None	+1332	
Middle Creek	Approximately 0.81 mile downstream of Avenue B	None	+1405	Unincorporated Areas of Thurston County, Village of Emerson, Winnebago Indian Tribe.
Unnamed Tributary to Logan Creek.	Approximately 0.27 mile upstream of County Road 15	None	+1425	
	Approximately 0.75 mile upstream of State Highway 9	None	+1333	Unincorporated Areas of Thurston County, Omaha Indian Tribe.
Unnamed Tributary to Middle Creek.	Approximately 0.30 mile upstream of State Highway 9	None	+1347	
	Approximately 530 feet downstream of Lagan Street ...	None	+1419	Village of Emerson, Winnebago Indian Tribe.
	Approximately 750 feet upstream of 1st Street	None	+1441	

* 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

Omaha Indian Tribe

Maps are available for inspection at 100 Main Street, Macy, NE 68039.

Unincorporated Areas of Thurston County

Maps are available for inspection at 106 South 5th Street, Pender, NE 68047.

Village of Emerson

Maps are available for inspection at 211 West Front Street, Emerson, NE 68733.

Winnebago Indian Tribe

Maps are available for inspection at 100 Buff Street, Winnebago, NE 68071.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Suffolk County, New York, and Incorporated Areas				
Atlantic Ocean	Approximately 700 feet west of the Oak Beach Road dead end.	+11	+8	Town of Babylon, Shinnecock Indian Reservation, Town of Brookhaven, Town of East Hampton, Town of Islip, Town of Southampton, Village of Amityville, Village of Babylon, Village of Bellport, Village of East Hampton, Village of Lindenhurst, Village of Ocean Beach, Village of Quogue, Village of Sagaponack, Village of Saltaire, Village of Southampton, Village of West Hampton Dunes, Village of Westhampton Beach.
Barley Field Cove	Approximately 160 feet south of Beach Lane extended	+13	+23	Town of Southold.
	Approximately 1,000 feet east of the intersection of East End Drive and Brooks Point Road.	+10	+8	
	Shoreline approximately 1,425 feet east of the intersection of East End Drive and Brooks Point Road.	+14	+16	
Bellport Bay	At the intersection of Thorn Hedge Road and Bayberry Road.	None	+5	Village of Bellport, Town of Brookhaven, Village of Patchogue.
Block Island Sound	Shoreline at southwestern end of South Howells Point Road.	+7	+8	Town of East Hampton, Town of Southold.
	Approximately 850 feet northwest of the intersection of Montauk County Park Road and East Lake Drive.	+8	+5	
	Fishers Island—Shoreline approximately 900 feet east of the intersection of Montauk Highway and Old Montauk Highway.	+11	+21	
Block Island Sound	Approximately 1,700 feet southwest of the intersection of Soundview Drive and Captain Kidd's Path.	+8	#2	Town of East Hampton.
Bostwick Bay	Gardiners Island—Approximately 1.4 miles northwest of the intersection of Gardiner Island Road and 4wd Road.	+8	+7	Town of East Hampton.
	Gardiners Island—Approximately 1.2 miles northwest of the intersection of Gardiner Island Road and 4wd Road.	+10	+12	
Centerport Harbor	Approximately 500 feet south of the intersection of Prospect Road and Mill Dam Road.	+11	+9	Town of Huntington, Village of Huntington Bay, Village of North Haven.
Cocomount Cove	Shoreline approximately 1,500 feet northeast of the intersection of Monroe Drive and Garfield Street.	+13	+14	Town of Southold.
	Approximately 500 feet northwest of the intersection of East End Drive and Brooks Point Road.	+9	+8	
	Shoreline approximately 735 feet northwest of the intersection of East End Drive and Brooks Point Road.	+12	+13	
Coecles Inlet	Burns Road, approximately 1,200 feet east of the intersection with North Cartwright Avenue.	+8	+7	Town of Shelter Island, Village of Dering Harbor.
Cold Spring Harbor	Shoreline at eastern end of Burns Road	+11	+10	Town of Huntington.
	Approximately 150 feet north of the intersection of Shore Road and Spring Street.	+11	+9	
	Approximately 1,325 feet west of the intersection of Dogwood Lane and Fort Hill Drive.	+11	+33	
Conscience Bay	Approximately 175 feet southwest of the intersection of Bobs Lane and Chickadee Way.	+10	+8	Town of Brookhaven, Village of Old Field, Village of Poquott, Village of Port Jefferson.
	Shoreline approximately 1,340 feet west of the intersection of Gaul Road North and Gun Path.	+10	+14	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Cutchogue Harbor	Shoreline approximately 50 feet west of the intersection of Skunk Lane and Sterling Road.	+7	+6	Town of Southold.
	Shoreline approximately 1,260 feet south of the intersection of Haywaters Road and West Cove Road.	+7	+16	
	At the intersection of Orchard Street and 1st Street	+7	#1	
	Approximately 65 feet northwest of the southeastern terminus of Old Harbor Road.	+7	#2	
Dering Harbor	Approximately 700 feet east of the intersection of North Ferry Road and W Neck Road.	+7	+5	Town of Shelter Island, Village of Dering Harbor, Village of Greenport.
	Shoreline approximately 540 feet north of the intersection of North Ferry Road and Winthrop Road.	+9	+17	
Duck Island Harbor	Approximately 200 feet east of the end of South Harbor Road.	None	+11	Town of Huntington, Village of Asharoken, Village of Huntington Bay, Village of Northport.
	Approximately 1,200 feet southeast of the intersection of Ponnell Road and South Harbor Road.	+11	+16	
Fishers Island Sound	Approximately 1,400 feet north of the intersection of East End Drive and Clay Point Road.	None	+7	Town of Southold.
	Approximately 1,600 feet northwest of the intersection of Fox Avenue and Crescent Avenue.	+12	+46	
Flanders Bay	At the intersection of Meeting House Creek Road and Harbor Road.	+7	+6	Town of Riverhead, Town of Southampton.
	Shoreline approximately 1,850 feet east of the intersection of Indian Point Road and Circle Drive.	+7	+13	
Flanders Bay	At the intersection of Indian Point Road and Circle Drive.	None	#2	Town of Riverhead.
	Approximately 75 feet east of the intersection of Harbor Road and Meeting House Creek Road.	+7	#2	
Fort Pond Bay	Approximately 425 feet west of the intersection of South Erie Avenue and South Embassy Street.	+9	+5	Town of East Hampton.
	Shoreline approximately 1,500 feet west of the end of Wills Point Road.	+10	+19	
	Shoreline approximately 600 feet north of the end of Wills Point Road.	+8	#2	
	Shoreline approximately 1,600 feet north of the end of Wills Point Road.	+8	#2	
Gardiners Bay	Shoreline approximately 850 feet south of the end of Wills Point Road.	+8	#2	Town of East Hampton, Town of Shelter Island, Town of Southold, Village of Dering Harbor.
	Approximately 420 feet southwest of the intersection of Kings Point Road and Hog Creek Lane.	+8	+5	
	Along the shoreline, approximately 1,500 feet west of Plum Gut Harbor.	+12	+19	
Great Peconic Bay	At the intersection of West Street and 2nd Street	+7	+6	Town of Riverhead, Town of Southampton, Town of Southold.
	Approximately 750 feet east 1st Street and Bray Avenue.	+7	+11	
	West Street approximately 300 feet southeast of the intersection with 2nd Street.	+7	#1	
	Oak Street approximately 175 feet southeast of the intersection with Bayside Avenue.	+7	#2	
Great South Bay	Intersection of Gibson Street and Huma Avenue	+5	+4	Town of Babylon, Town of Islip, Village of Amityville, Village of Babylon, Village of Brightwaters, Village of Lindenhurst.
	At southern end of Norman Avenue	+8	+10	
Greenport Harbor	At the intersection of Sterling Avenue and Sterling Street.	+7	+6	Town of Southold, Town of Shelter Island, Village of Greenport.
	Shoreline approximately 170 feet east-southeast of the intersection of Sterling Avenue and Sterling Street.	+9	+10	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Hay Harbor	Approximately 300 feet north of the intersection of Equestrian Avenue and Winthrop Drive.	+10	+11	Town of Southold.
	Approximately 0.5 mile north of the intersection of Equestrian Avenue and Winthrop Drive.	+12	+16	
Huntington Bay	Approximately 50 feet south of the intersection of Surf Lane and Lighthouse Road.	+11	+9	Town of Huntington, Village of Asharoken, Village of Huntington Bay, Village of Lloyd Harbor.
	Shoreline approximately 1,000 feet east of the end of Crescent Beach Drive.	+13	+21	
Huntington Harbor	Approximately 400 feet south of the intersection of Bouton Road and Pine Point Road.	+11	+9	Town of Huntington, Village of Huntington Bay, Village of Lloyd Harbor.
	Shoreline approximately 760 feet southeast of the intersection of Bouton Road and Pine Point Road.	+11	+12	
Lake Montauk	Farragut Road, approximately 1,400 feet northeast of the intersection with West Lake Drive.	+8	+5	Town of East Hampton.
	Approximately 350 feet west of the intersection of Prospect Hill Lane and East Lake Drive.	+9	+11	
Little Peconic Bay	Approximately 350 feet south of the intersection of Arrowhead Lane and Campfire Lane.	+7	+6	Town of Southold.
	Approximately 1,700 feet northeast of the intersection of Arrowhead Lane and Campfire Lane.	+7	+16	
	Approximately 400 feet northeast of the intersection of Nassau Point Road and Broadwaters Road.	+7	#1	
	Approximately 400 feet southeast of the intersection of Nassau Point Road and Broadwaters Road.	+7	#2	
Lloyd Harbor	Approximately 700 feet west of the intersection of Lloyd Harbor Road and Fiddlers Green Drive.	+11	+9	Village of Lloyd Harbor.
	Shoreline approximately 825 feet east-northeast of the intersection of Lloyd Harbor Road and Fiddlers Green Drive.	+15	+14	
Long Island Sound	Approximately 1,300 feet north of the intersection of Main Road and Cove Beach Road.	+9	+6	Village of Lloyd Harbor, Town of Brookhaven, Town of Huntington, Town of Riverhead, Town of Shelter Island, Town of Smithtown, Town of Southold, Village of Asharoken, Village of Belle Terre, Village of Dering Harbor, Village of Greenport, Village of Head of The Harbor, Village of Huntington Bay, Village of Nissequogue, Village of Northport, Village of Old Field, Village of Poquott, Village of Port Jefferson, Village of Shoreham.
	Approximately 500 feet west of East Point on Plum Island.	+14	+46	
Long Island Sound	At the intersection of Carole Road and Old Cove Road	+9	#2	Town of Southold.
Majors Harbor	Along the shoreline, approximately 2,200 feet southeast from the end of Mashomack Preserve Road.	+8	+5	Town of Shelter Island, Town of Southampton, Village of North Haven.
	Shoreline at Majors Point	+9	+8	
Moriches Bay	At the intersection of South County Road and Raynor Drive.	+8	+7	Town of Brookhaven, Poospatuck Indian Reservation, Town of Southampton, Village of West Hampton Dunes, Village of Westhampton Beach.
	Shoreline, approximately 400 feet north of the intersection of Dune Road and Dune Lane.	+9	+12	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Napeague Bay	Approximately 150 feet south of the intersection of Little Alberts Road and Alberts Landing. Shoreline approximately 0.6 mile west of the intersection of Bayview Avenue and Lazy Point Road. Approximately 1,400 feet southeast of the intersection of Waters Edge and Barnes Hole Road.	+7 +10 None	+5 +14 #1	Town of East Hampton.
Nicoll Bay	At the intersection of Cross Road and West Shore Road. Approximately 700 feet south of the intersection of Shore Drive and Edgewood Avenue.	None +3	+5 +7	Town of Islip.
Northeast Branch Nissuquogue River.	Approximately 425 feet upstream of Branch Drive	None	+46	Town of Smithtown.
Northport Bay	Approximately 525 feet upstream of Branch Drive	None	+46	Town of Huntington, Village of Asharoken, Village of Huntington Bay, Village of Northport.
	Approximately 45 feet west of the intersection of Eatons Neck Road and Steers Avenue.	None	+9	
	Shoreline approximately 1,100 feet northeast of the intersection of East Neck Road and Crest Road.	+13	+21	
Northport Harbor	At the intersection of Scudder Avenue and Bayview Avenue. Approximately 1,400 feet northwest of the intersection of Bluff Point Road and Duffy Road.	None +13	+9 +16	Town of Huntington, Village of Northport.
Northwest Harbor	Approximately 500 feet north of the intersection of Alewife Brook Road and Terrys Trail. Shoreline approximately 1,900 feet north of the western terminus of Alewife Brook Road.	+8 +10	+5 +19	Town of East Hampton.
Noyack Bay	At the intersection of Bay Avenue and Noyack Avenue Shoreline approximately 560 feet west of the intersection of Bay View Court and North Haven Way.	+8 +9	+6 +23	Town of Southampton, Village of North Haven, Village of Sag Harbor.
Orient Harbor	At the intersection of Bay Avenue and Rabbit Lane	+8	+6	Town of Southold, Town of Shelter Island, Village of Dering Harbor.
	Shoreline at the southeastern end of Bay Avenue	+10	+9	Town of Huntington, Village of Huntington Bay, Village of Lloyd Harbor.
	Approximately 875 feet northeast of the intersection of East Gillette Drive and Cleaves Point Road.	+8	#1	
Oyster Bay	Approximately 150 feet north of the intersection of Shore Road and Spring Street.	+11	+9	
	Approximately 750 feet southwest of Turtle Lane and Mallard Drive.	+11	+39	Village of Patchogue, Town of Brookhaven, Town of Islip.
Patchogue Bay	At the intersection of Harrison Street and South Ocean Avenue.	None	+5	
Pipes Cove	Shoreline at southern end of Durkee Lane	+7	+8	Town of Southold, Town of Shelter Island, Village of Greenport.
	Approximately 190 feet north of the intersection of Bayshore Road and August Road.	+7	+6	
	Shoreline approximately 220 feet east of the intersection of Bayshore Road and August Road.	+7	+13	
Port Jefferson Harbor	Approximately 750 feet northwest of the intersection of Barnum Avenue and Maple Place.	+10	+8	Town of Brookhaven, Village of Belle Terre, Village of Old Field, Village of Poquott, Village of Port Jefferson.
	Shoreline approximately 350 feet northeast of the intersection of Washington Street and Chestnut Avenue.	+13	+24	Town of Southampton, Town of Riverhead.
Reeves Bay	Approximately 100 feet south of the intersection of Flanders Road and Wood Road Trail.	None	+7	
	Approximately 300 feet west of the intersection of Long Neck Boulevard and Fantasy Drive.	+9	+10	
Sag Harbor Bay	Approximately 300 feet south of the intersection of Woodland Drive and Division Avenue.	+10	+6	Village of Sag Harbor, Town of East Hampton, Village of North Haven.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Shelter Island Sound	Shoreline approximately 190 feet north of the intersection of Meredith Avenue and Terry Drive.	+11	+13	Town of Shelter Island, Town of Southold, Village of North Haven.
	Approximately 700 feet southwest of the intersection of Nostrand Parkway and Bootleggers Alley.	+7	+5	
Shelter Island Sound	Approximately 550 feet west of the intersection of North Haven Way and On the Bluff.	+9	+23	Town of Shelter Island, Town of Southold, Village of Dering Harbor, Village of North Haven.
	Approximately 140 feet northwest of the intersection of Peconic Avenue and Brander Parkway.	+7	#1	
Shinnecock Bay	Approximately 800 feet west-southwest of the intersection of Nostrand Parkway and Bootleggers Alley.	+7	#2	Town of Southampton, Village of Quogue.
	Approximately 100 feet east of the intersection of Bonita Road and Whiting Road.	None	+8	
Smith Cove	Shoreline approximately 900 feet northeast of the intersection of Dune Road and Triton Lane.	+9	+14	Town of Shelter Island, Village of North Haven.
	Approximately 370 feet north of the intersection of Thompson Road and Irene Lane.	+8	+5	
Smithtown Bay	Approximately 700 feet southeast of the intersection of Thompson Road and Irene Lane.	+9	+21	Town of Smithtown, Village of Nissequoque.
	At the intersection of Riviera Drive and Magnolia Drive	+12	+9	
Southold Bay	Approximately 1,200 feet north of the intersection of Old Dock Road and Upper Dock Road.	+15	+17	Town of Southold, Town of Shelter Island.
	Approximately 850 feet east of the intersection of Route 25 and Town Harbor Lane.	+7	+6	
Tobaccot Bay	Approximately 275 feet north of the intersection of Basin Road and Paradise Point Road.	+7	+21	Town of East Hampton.
	Approximately 1.1 miles east of the intersection of Gardiner Island Road and 4WD Road.	+8	+6	
West Harbor	Approximately 1.4 miles east of the intersection of Gardiner Island Road and 4WD Road.	+10	+11	Town of Southold.
	Approximately 0.6 mile east of the intersection of East End Drive and Peninsula Road.	+9	+7	
West Neck Harbor	Shoreline, approximately 1,200 feet east of the intersection of Montauk Avenue and Hedge Street.	+12	+19	Town of Shelter Island, Village of North Haven.
	Approximately 1,000 feet west of the intersection of Lake Drive and South Midway Road.	+7	+5	
	Shoreline approximately 1,500 feet south of the intersection of Sea Gate Drive and South Midway Road.	+10	+8	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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

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

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

ADDRESSES

Poospatuck Indian Reservation

Maps are available for inspection at Poospatuck Indian Reservation Administrative Offices, 138 Eleanor Avenue, Mastic, NY.

Shinnecock Indian Reservation

Maps are available for inspection at Shinnecock Indian National Tribal Office, 100 Church Street, Southampton, NY.

Town of Babylon

Maps are available for inspection at Babylon Town Hall, 200 East Sunrise Highway, Lindenhurst, NY.

Town of Brookhaven

Maps are available for inspection at Brookhaven Town Hall, One Independence Hill, Farmingville, NY.

Town of East Hampton

Maps are available for inspection at East Hampton Town Hall, 159 Pantigo Road, East Hampton, NY.

Town of Huntington

Maps are available for inspection at Huntington Town Hall, 100 Main Street, Huntington, NY.

Town of Islip

Maps are available for inspection at Islip Town Hall, 655 Main Street, Islip, NY.

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

Town of Riverhead

Maps are available for inspection at Riverhead Town Hall, 201 Howell Avenue, Riverhead, NY.

Town of Shelter Island

Maps are available for inspection at Shelter Island Town Hall, 38 North Ferry Road, Shelter Island, NY.

Town of Smithtown

Maps are available for inspection at Smithtown Town Hall, 99 West Main Street, Smithtown, NY.

Town of Southampton

Maps are available for inspection at Southampton Town Hall, 116 Hampton Road, Southampton, NY.

Town of Southold

Maps are available for inspection at Southold Town Hall, 53095 Routh 25, Southold, NY.

Village of Amityville

Maps are available for inspection at Amityville Village Hall, 21 Greene Avenue, Amityville, NY.

Village of Asharoken

Maps are available for inspection at Asharoken Village Hall, 1 Asharoken Avenue, Northport, NY.

Village of Babylon

Maps are available for inspection at Babylon Village Hall, 153 West Main Street, Babylon, NY.

Village of Belle Terre

Maps are available for inspection at Belle Terre Village Hall, 1 Cliff Road, Belle Terre, NY.

Village of Bellport

Maps are available for inspection at Bellport Village Hall, 29 Bellport Lane, Bellport, NY.

Village of Brightwaters

Maps are available for inspection at Brightwaters Village Hall, 40 Seneca Drive, Brightwaters, NY.

Village of Dering Harbor

Maps are available for inspection at Dering Harbor Village Hall, 23 Locust Point Road, Shelter Island Heights, NY.

Village of East Hampton

Maps are available for inspection at East Hampton Village Hall, 86 Main Street, East Hampton, NY.

Village of Greenport

Maps are available for inspection at Greenport Village Hall, 236 Third Street, Greenport, NY.

Village of Head of The Harbor

Maps are available for inspection at Head of the Harbor Village Hall, 500 North Country Road, Saint James, NY.

Village of Huntington Bay

Maps are available for inspection at Huntington Bay Village Hall, 244 Vineyard Road, Huntington Bay, NY.

Village of Lindenhurst

Maps are available for inspection at Lindenhurst Village Hall, 430 South Wellwood Avenue, Lindenhurst, NY.

Village of Lloyd Harbor

Maps are available for inspection at Lloyd Harbor Village Hall, 32 Middle Hollow Road, Huntington, NY.

Village of Nissequogue

Maps are available for inspection at Nissequogue Village Hall, 631 Moriches Road, St. James, NY.

Village of North Haven

Maps are available for inspection at North Haven Village Hall, 335 Ferry Road, Sag Harbor, NY.

Village of Northport

Maps are available for inspection at Northport Village Hall, 224 Main Street, Northport, NY.

Village of Ocean Beach

Maps are available for inspection at Ocean Beach Village, 315 Cottage Walk, Ocean Beach, NY.

Village of Old Field

Maps are available for inspection at Old Field Village Hall, 207 Old Field Road, Setauket, NY.

Village of Patchogue

Maps are available for inspection at Patchogue Village Hall, 14 Baker Street, Patchogue, NY.

Village of Poquott

Maps are available for inspection at Poquott Village Hall, 45 Birchwood Avenue, East Setauket, NY.

Village of Port Jefferson

Maps are available for inspection at Port Jefferson Village Hall, 121 West Broadway, Port Jefferson, NY.

Village of Quogue

Maps are available for inspection at Quogue Village Hall, 7 Village Lane, Quogue, NY.

Village of Sag Harbor

Maps are available for inspection at Sag Harbor Village Hall, 22 Main Street, Sag Harbor, NY.

Village of Sagaponack

Maps are available for inspection at Sagaponack Village Hall, 20 Sagg Main Street, Sagaponack, NY.

Village of Saltaire

Maps are available for inspection at Saltaire Village Hall, 103 Broadway, Saltaire, NY.

Village of Shoreham

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

Maps are available for inspection at Shoreham Village Hall, 80 Woodville Road, Shoreham, NY.

Village of Southampton

Maps are available for inspection at Southampton Village Hall, 23 Main Street, Southampton, NY.

Village of West Hampton Dunes

Maps are available for inspection at West Hampton Dunes Village Hall, 4 Arthur Street, West Hampton Beach, NY.

Village of Westhampton Beach

Maps are available for inspection at Westhampton Beach Village Hall, 165 Mill Road, Westhampton Beach, NY.

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

Greene County, Ohio, and Incorporated Areas

Possum Run	Approximately 900 feet downstream of Wilmington Pike. At Wilmington Pike North Branch	None	+931	City of Centerville.
Shawnee Park Tributary	Approximately 4,200 feet upstream of Monroe Drive	None	+940	City of Xenia.
	Approximately 40 feet downstream of U.S. Route 42 ...	+929	+924	
Shawnee Park Tributary	Approximately 700 feet downstream of U.S. Route 42	+942	+943	Unincorporated Areas of Greene County.
		+934	+930	
South Fork Massies Creek	Downstream of U.S. Route 42	+942	+943	Unincorporated Areas of Greene County.
	Approximately 2,800 feet upstream of Railroad	+1042	+1041	
	Approximately 240 feet downstream of Weimer Road ..	+1051	+1050	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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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 Centerville

Maps are available for inspection at Municipal Building, 100 West Spring Valley Road, Centerville, OH 45458.

City of Xenia

Maps are available for inspection at City Hall, 101 North Detroit Street, Xenia, OH 45385.

Unincorporated Areas of Greene County

Maps are available for inspection at Greene County Building Regulation, 667 Dayton-Xenia Road, OH 45385.

Hamilton County, Ohio, and Incorporated Areas

Little Miami River	65 feet upstream of Norfolk and Western railroad crossing.	None	+501	Unincorporated Areas of Hamilton County, Village of Fairfax, Village of Mariemont.
	665 feet downstream of Harvard Street in Village of Mariemont.	None	+501	

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+ North American Vertical Datum.

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ADDRESSES

Unincorporated Areas of Hamilton County

Maps are available for inspection at Hamilton County Department of Public Works, 138 East Court Street, Room 800, Cincinnati, OH 45202.

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

Village of Fairfax

Maps are available for inspection at Fairfax Municipal Building, 5903 Hawthorne Avenue, Fairfax, OH 45227.

Village of Mariemont

Maps are available for inspection at Mariemont Municipal Building, 6907 Wooster Pike, Mariemont, OH 45227.

Claiborne County, Tennessee, and Incorporated Areas

Clinch River/Norris Lake	Approximately 2.3 miles downstream of the confluence of Big Barren Creek.	None	+1055	Unincorporated Areas of Claiborne County.
	Approximately 3.3 miles upstream of U.S. Highway 25	None	+1055	

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+ North American Vertical Datum.

Depth in feet above ground.

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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 Claiborne County**

Maps are available for inspection at County Courthouse, 1740 Main Street, Tazewell, TN 37879.

Montgomery County, Virginia, and Incorporated Areas

Plum Creek	Approximately 900 ft upstream of U.S. Highway 11	+1754	+1755	Unincorporated Areas of Montgomery County.
	Approximately at the intersection of Gate Road and Plum Creek Road.	None	+1918	

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+ 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 Montgomery County**

Maps are available for inspection at Planning and GIS Services, 755 Roanoke Street, Christiansburg, VA 24073.

Pepin County, Wisconsin, and Incorporated Areas

Chippewa River	Approximately 7,000 feet downstream of the new U.S. Highway 10 Bridge.	None	+712	City of Durand, Unincorporated Areas of Pepin County.
	Approximately 6,000 feet upstream of the confluence of Bear Creek.	None	+717	
Mississippi River	Approximately at the intersection of Lakeport Road and State Highway 35.	+682	+681	Village of Stockholm, Unincorporated Areas of Pepin County.
	At the county boundary with Pierce County.	+682	+681	

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+ North American Vertical Datum.

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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 Durand**

Maps are available for inspection at City Hall, 104 East Main Street, Durand, WI 54736.

Unincorporated Areas of Pepin County

Maps are available for inspection at Pepin County Government Center, 740 7th Avenue West, Pepin, WI 54736.

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

Village of Stockholm

Maps are available for inspection at Village Hall, 2041 Spring Street, Stockholm, WI 54769.

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

Dated: October 9, 2008.

Michael K. Buckley,

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

[FR Doc. E8-25263 Filed 10-22-08; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[DA 08-2278; RM No. 11497]

Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, comment is sought on a May 20, 2008 petition for rulemaking (Petition) filed by Rural Cellular Association (RCA) (Petitioner). The Petitioner asks the Federal Communications Commission to initiate a rulemaking to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers, and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest.

DATES: Interested parties may file comments on or before December 2, 2008, and reply comments on or before December 22, 2008.

ADDRESSES: You may submit comments, identified by RM No. 11497, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Monica DeLong, Wireless Telecommunications Bureau at (202) 418-1337 or Monica.DeLong@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released on October 10, 2008. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or e-mail FCC@BCPIWEB.com. Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, RM No. 11497. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

On May 20, 2008, RCA filed a petition for rulemaking.¹ "Pursuant to Sections

1, 4(i), 201(b), 202(a), 303(r), and 307(b) of the Communications Act, and Section 1.401 of the Commission's rules,"² the Petitioner asks the Commission to "initiate a rulemaking to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers, and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest."³ The Wireless Telecommunications Bureau seeks comment on the Petition.

Procedural Matters

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

¹ In the Matter of Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, filed May, 20, 2008 (Petition).

² Petition at 1, citing 47 U.S.C. 151, 154(i), 201(b), 202(a), 303(r), and 307(b); 47 CFR 1.401.

³ *Id.*

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, e-mail FCC@BCPIWEB.com. Parties should also send a copy of their filings to Monica DeLong, Wireless Telecommunications Bureau, Federal Communications Commission, Room 6530, 445 12th Street, SW., Washington, DC 20554, or by e-mail to Monica.DeLong@fcc.gov. Comments filed in response to this public notice will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, RM No.

11497. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (202) 488-5563, or e-mail FCC@BCPIWEB.com.

Federal Communications Commission.

James D. Schlichting,

Acting Chief, Wireless Telecommunications Bureau.

[FR Doc. E8-25058 Filed 10-22-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[DA 08-2279; RM No. 11498]

Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking of Rural Telecommunications Group, Inc. To Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, comment is sought on a July 16, 2008 petition for rulemaking (Petition) filed by Rural Telecommunications Group, Inc. (RTG) (Petitioner). The Petitioner asks the Federal Communications Commission to impose a spectrum aggregation limit on all commercial terrestrial wireless spectrum below 2.3 GHz. Specifically, RTG asks that the Commission adopt rules providing that no licensee of commercial terrestrial wireless spectrum below 2.3 GHz, including all parties under common control, should be permitted to have an attributable interest in more than 110 megahertz of licensed spectrum with any significant overlap in any county.

DATES: Interested parties may file comments on or before December 2, 2008, and reply comments on or before December 22, 2008.

ADDRESSES: You may submit comments, identified by RM No. 11498, by any of the following methods:

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

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Angela Kronenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418-2963 or Angela.Kronenberg@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released on October 10, 2008. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or e-mail FCC@BCPIWEB.com. Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, RM No. 11498. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

On July 16, 2008, RTG filed a petition requesting that the Federal Communications Commission (Commission) impose a spectrum aggregation limit on all commercial terrestrial wireless spectrum below 2.3 GHz. Specifically, RTG asks that the Commission adopt rules providing that no licensee of commercial terrestrial wireless spectrum below 2.3 GHz, including all parties under common control, should be permitted to have an attributable interest in more than 110 megahertz of licensed spectrum with any significant overlap in any county. The Wireless Telecommunications Bureau seeks comment on RTG's Petition.

Procedural Matters

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any

envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, e-mail FCC@BCPIWEB.com. Parties should also send a copy of their filings to Angela Kronenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 6530, 445 12th Street, SW., Washington, DC 20554, or by e-mail to Angela.Kronenberg@fcc.gov. Comments filed in response to this public notice will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, RM No. 11498. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (202) 488-5563, or e-mail FCC@BCPIWEB.com.

Federal Communications Commission.

James D. Schlichting,

Acting Chief, Wireless Telecommunications Bureau.

[FR Doc. E8-25056 Filed 10-22-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08-2274; MB Docket No. 08-62]

Radio Broadcasting Services; Crandon, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division, on its own motion, proposes the substitution of Channel 276A for Channel 276C3 at Crandon, Wisconsin to accommodate the pending application of Station WGLX-FM, Channel 277C1, Wisconsin Rapids, Wisconsin. *See* File No. BPH-20050406ACK. The proposed reference coordinates for Channel 276A at Crandon, Wisconsin, are 45-34-18 NL and 88-53-54 WL.

DATES: Comments must be filed on or before December 1, 2008, and reply comments on or before December 16, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08-62, adopted October 8, 2008, and released October 10, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or via e-mail <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 276C3 and adding Channel 276A at Crandon.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–25323 Filed 10–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 08–2277; MB Docket No. 08–97; RM–11428]

Radio Broadcasting Services; Crowell, Knox City, Quanah, and Rule, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR Section 73.202(b). The Commission requests comment on a petition filed by LKCM Radio Licenses, L.P. ("Petitioner"), proposing the substitution of Channel 288C2 for vacant Channel 239C2 at Rule, Texas; substitution of Channel 293A for vacant Channel 291A at Knox City, Texas; substitution of Channel 255C3 for vacant Channel 293C3 at Crowell, Texas; and substitution of Channel 251C3 for vacant Channel 255C3 at Quanah, Texas. *See*

SUPPLEMENTARY INFORMATION *infra*.

DATES: Comments must be filed on or before December 1, 2008, and reply comments on or before December 16, 2008.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner's counsel as follows: Mark N. Lipp, Esq., Scott

Woodworth, Esq., Wiley Rein LLP, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–97, adopted October 8, 2008, and released October 10, 2008. Petitioner has also filed applications requesting the following: (1) A change in channel class and community of license for FM Station KJKB from Channel 238A at Jacksboro, Texas, to Channel 238C3 at Scotland, Texas, as that community's first local service; (2) A change in channel class and community of license for FM Station KFWR from Channel 240C1 at Mineral Wells, Texas, to Channel 240C0 at Jacksboro, Texas; (3) A change in channel class and community of license of Station KKAJ–FM from Channel 239C1 at Ardmore, Oklahoma, to Channel 239C2 at Frederick, Oklahoma; and (4) A channel change and change in class of FM Station KYBE from Channel 240A to Channel 239C3 at Frederick, Oklahoma.

To facilitate the allotment of Channel 240C0 to Jacksboro for Station KFWR and Channel 239C3 to Frederick for Station KKAJ–FM, petitioner proposes the substitution of Channel 288C2 for vacant Channel 239C2 at Rule, Texas. Channel 288C2 can be allotted at Rule, consistent with Section 73.207 of the Commission's rules, provided that the vacant allotment at Knox City, Texas, is changed from Channel 291A to Channel 293A. To accommodate the allotment of Channel 293A at Knox City, petitioner proposes the substitution of Channel 255C3 for vacant Channel 293C3 at Crowell, Texas. Finally, in order to allot Channel 255C3 at Crowell, Texas, petitioner requests that the Commission change the channel of the vacant allotment at Quanah, Texas, from Channel 255C3 to Channel 251C3. Channel 255C3 can be allotted at Crowell, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 km (5.7 miles) north of Crowell. The proposed coordinates for Channel 255C3 at Crowell are 34–03–58 North Latitude and 99–43–52 West Longitude. Channel 293A can be allotted at Knox City, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 km (1.6 miles) northeast of Knox City. The proposed coordinates for Channel 293A at Knox City are 33–25–55 North Latitude and 99–47–43 West Longitude. Channel 251C3 can be

allotted at Quanah, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 km (7.4 miles) north of Quanah. The proposed coordinates for Channel 251C3 at Quanah are 34–24–09 North Latitude and 99–46–02 West Longitude. Channel 288C2 can be allotted at Rule, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 km (4.1 miles) east of Rule. The proposed coordinates for Channel 288C2 at Rule are 33–10–29 North Latitude and 99–49–26 West Longitude. The proposed channel changes, if granted, would be subject to the final outcome of MM Docket No. 00–148, due to mutual exclusivity between the proposed substitution at Crowell and a proposal in MM Docket No. 00–148 to add Channel 255C3 at Quanah. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, <http://www.bcpweb.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 293C3 and by adding Channel 255C3 at Crowell; by removing Channel 291A and by adding Channel 293A at Knox City; by removing Channel 255C3 and by adding Channel 251C3 at Quanah; and by removing Channel 239C2 and by adding Channel 288C2 at Rule.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–25321 Filed 10–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2273; MB Docket No. 08–68; RM–11421]

Radio Broadcasting Services; Beatty and Goldfield, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division at the request of Keilly Miller proposes the allotment of Channel 259A at Beatty, Nevada and Channel 262C1 at Goldfield, Nevada to accommodate a hybrid FM change of community of license application that proposes the substitution of Channel 261C3 for Channel 261C at Beatty, Nevada, reallotment of Channel 261C3 from Beatty, Nevada to Crystal, Nevada, as its first local service. *See* File No. BMPH–

20070727ABV. A staff engineering analysis indicates that Channel 259A can be allotted to Beatty consistent with the minimum distance separation requirements of the Rules with a site restriction 8.6 kilometers (5.3 miles) west located at reference coordinates 36–56–05 NL and 116–51–00 WL. Additionally, Channel 262C1 can be allotted to Goldfield consistent with the minimum distance separation requirements of the Commission's Rules (the "Rules") with a site restriction 0.6 kilometers (0.4 miles) northeast of the community located at reference coordinates 37–42–41 NL and 117–13–56 WL.

DATES: Comments must be filed on or before December 1, 2008, and reply comments on or before December 16, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: John S. Neely, Esq., Counsel to Keilly Miller, Miller and Neely, P.C., 6900 Wisconsin Avenue, Suite 704, Bethesda, MD 20815.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–68, adopted October 8, 2008, and released October 10, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail <http://www.BCPIWEB.com>. This document does not contain proposed information

collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Beatty, Channel 259A and by adding Goldfield, Channel 262C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–25347 Filed 10–22–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 73, No. 206

Thursday, October 23, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 20, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Qualified Products List for Water Enhancers.

OMB Control Number: 0596-0182.

Summary of Collection: The Forest Service (FS) objective is, "To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively." To accomplish their objective, FS evaluates chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. For Water Enhancer products the FS requires that a Technical Data Form be completed, the information collected here is specific mixing requirements and hydration requirements for water enhancer products. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 29.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-25313 Filed 10-22-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the University of Mississippi of University, Mississippi, an exclusive license to U.S. Patent Application Serial No. 12/136,341, "Method to Ameliorate Oxidative Stress and Improve Working Memory via Pterostilbene Administration", filed on June 10, 2008.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4-1174, Beltsville, Maryland 20705-5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* 301-504-5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. 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 thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8-25256 Filed 10-22-08; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Agricultural Library's intent to request an extension of a currently approved information collection form related to the Animal Welfare Information Center's (AWIC) workshop, *Meeting the Information Requirements of the Animal Welfare Act*. This workshop registration form requests the following information from participants: contact information, affiliation, and database searching experience. Participants include principal investigators, members of Institutional Animal Care and Use committees, animal care technicians, facility managers, veterinarians, and administrators of animal use programs. **DATES:** Comments on this notice must be received by December 29, 2008 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Sandra Ball, Information Technology Specialist, USDA, ARS, NAL Animal Welfare Information Center, 10301 Baltimore Avenue, Room #410, Beltsville, MD 20705-2351. Submit electronic comments to: sball@nal.usda.gov.

FOR FURTHER INFORMATION CONTACT: Sandra Ball, Information Technology Specialist. Phone: 301-504-6212 or Fax: 301-504-7125.

SUPPLEMENTARY INFORMATION:

Title: Workshop Registration, Meeting the Information Requirements of the Animal Welfare Act.

OMB Number: 0518-033.

Expiration Date: 02/27/2009.

Type of Request: To extend currently approved data collection form.

Abstract: This Web-based form collects information to register respondents in the workshop, *Meeting the Information Requirements of the*

Animal Welfare Act. Information collected includes the following: preference of workshop date, signature, name, title, organization name, mailing address, phone and fax numbers, and e-mail address. Five questions are asked regarding database searching experience, membership on an Institutional Animal Care and Use Committee, and goals for attending the workshop.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Principal investigators, members of Institutional Animal Care and Use Committees, animal care personnel, veterinarians, information providers, and administrators of animal use programs.

Estimated Number of Respondents: 34 per year.

Estimated Total Annual Burden on Respondents: 3 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for (OMB) approval. All comments will become a matter of public record.

Dated: September 3, 2008.

Antoinette Betschart,

Associate Administrator, ARS.

[FR Doc. E8-25255 Filed 10-22-08; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Investigations Under Section 232 of the Trade Expansion Act

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 22, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202)482-4895, llhall@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by section 232 of the Trade Expansion Act of 1962. The public may request that the Department of Commerce investigate the effect of imports of specific items on the national security of the United States. The request must include information and data on the domestic industry, foreign imports and the capability of the United States to restore domestic manufacturing capacity in the event of a national emergency.

The findings, including possible adjustments to imports through tariffs, will be publicly available and are reported to Congress.

II. Method of Collection

Submitted in paper form.

III. Data

OMB Control Number: 0694-0120.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 3,000 hours.

Estimated Total Annual Burden

Hours: 3,000.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-25297 Filed 10-22-08; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-840]

Carbon and Certain Alloy Steel Wire Rod From Canada: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Steve Bezirgianian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1131 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2008, the Department published the preliminary results of this administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada. See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Canada*, 73 FR 39646 (July 10, 2008). This review covers Ivaco Rolling Mills 2004 L.P. (formerly Ivaco Rolling Mills L.P.) and Sivaco Ontario (a division of Sivaco Wire Group 2004 L.P.) (formerly Ivaco, Inc.), (collectively referred to as "Ivaco"), for the period

October 1, 2006, to September 30, 2007. Ivaco submitted its case brief on August 11, 2008. Petitioners¹ submitted their rebuttal brief on August 18, 2008. The final results are currently due not later than November 7, 2008.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results up to 180 days from the date of publication of the preliminary results.

We determine that it is not practicable to complete the final results of this review within current statutory limits. The Department requires additional time to evaluate the extensive comments provided by parties on the level of trade issue. Therefore, we are extending the deadline for the final results of this review by 35 days, until not later than December 12, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1), 751(a)(3)(A), and 777(i)(1) of the Act.

Dated: October 17, 2008.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-25312 Filed 10-22-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public Key Infrastructure (PKI) Certificate Action Form

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

¹ ISG Georgetown Inc., Gerdau Ameristeel U.S. Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries, Inc., and Rocky Mountain Steel Mills

DATES: Written comments must be submitted on or before December 22, 2008.

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

- *E-mail:* Susan.Fawcett@uspto.gov. Include "0651-0045 comment" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Katherine Queen, Information Technology Security Program Office, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-8993; or by e-mail at Katherine.Queen@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) uses Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. PKI is a set of hardware, software, policies, and procedures that provide important security services for the electronic business activities of the USPTO, including protecting the confidentiality of unpublished patent applications in accordance with 35 U.S.C. 122 and 37 CFR 1.14, as well as protecting international patent applications in accordance with Article 30 of the Patent Cooperation Treaty.

In order to provide the necessary security for its electronic commerce systems, the USPTO uses PKI technology to protect the integrity and confidentiality of information submitted to the USPTO. PKI employs public and private encryption keys to authenticate the customer's identity and support secure electronic communication between the customer and the USPTO. Customers may submit a request to the USPTO for a digital certificate, which enables the customer to create the encryption keys necessary for electronic identity verification and secure transactions with the USPTO. This digital certificate is required in order to access secure online systems that are provided by the USPTO for transactions such as electronic filing of patent applications and viewing confidential

information about unpublished patent applications.

This information collection includes the Certificate Action Form (PTO–2042), which is used by the public to request a new digital certificate, the revocation of a current certificate, or the recovery of a lost or corrupted certificate. Customers may also change the name listed on the certificate or associate the certificate with one or more previously assigned Customer Numbers. A certificate request must include a notarized signature in order to verify the identity of the applicant. The Certificate Action Form also has an accompanying subscriber agreement to ensure that customers understand their obligations regarding the use of the digital certificates and cryptographic software. When generating a new certificate, customers may provide additional information for a set of security questions and answers that will enable customers to recover a lost certificate

online without having to contact USPTO support staff.

II. Method of Collection

The Certificate Action Form must be notarized and may be mailed or hand delivered to the USPTO. The Certificate Self-Recovery Form is submitted online through the USPTO Web site.

III. Data

OMB Number: 0651–0045.

Form Number(s): PTO–2042.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 4,126 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and subscriber agreement, gather the necessary information, prepare the

Certificate Action Form, and submit the completed request. The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to complete and electronically submit the information required for Certificate Self-Recovery.

Estimated Total Annual Respondent Burden Hours: 1,383 hours per year.

Estimated Total Annual Respondent Cost Burden: \$167,343 per year. The USPTO expects that 70% of the submissions for this collection will be prepared by paraprofessionals, 15% by attorneys, and 15% by independent inventors. Using those proportions and the estimated rates of \$100 per hour for paraprofessionals, \$310 per hour for associate attorneys in private firms, and \$30 per hour for independent inventors, the USPTO estimates that the average rate for those respondents will be approximately \$121 per hour. Therefore, the estimated total respondent cost burden for this collection will be \$167,343 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Certificate Action Form (including Subscriber Agreement) (PTO–2042)	30	2,063	1,032
Certificate Self-Recovery Form	10	2,063	351
Totals		4,126	1,383

Estimated Total Annual (Non-hour) Respondent Cost Burden: \$4,992. There are no capital start-up costs, maintenance costs, or filing fees associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of recordkeeping costs and postage costs associated with the Certificate Action Form.

This collection has recordkeeping costs due to the notarization requirement for authenticating the signatures on the Certificate Action Form. The USPTO estimates that the average fee for having a signature notarized is \$2 and that 2,063 responses for these forms will be submitted annually, for a total recordkeeping cost of \$4,126 per year.

This collection also has postage costs for submitting the Certificate Action Form to the USPTO by mail. The form cannot be faxed or submitted electronically because it requires an original notarized signature for identity verification. The USPTO estimates that the first-class postage cost for these forms will be 42 cents and that it will receive 2,063 mailed responses annually, for a total postage cost of approximately \$866 per year.

The total (non-hour) respondent cost burden for this collection in the form of recordkeeping costs and postage costs is estimated to be \$4,992 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 16, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–25280 Filed 10–22–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under “COMMERCE/PAT–TM–18 USPTO Identification and Security Access Control Systems.” This action is being taken to revise the Privacy Act Notice to include the information necessary for identification

cards that meet the standards set by Homeland Security Presidential Directive 12 (HSPD-12) "Policy for a Common Identification Standard for Federal Employees and Contractors" (August 27, 2004). The system of records will also be renamed "COMMERCE/PAT-TM-18 USPTO Personal Identification Verification (PIV) and Security Access Control Systems." We invite the public to comment on the amended system noted in this publication.

DATES: Written comments must be received no later than November 24, 2008. The proposed amendments will become effective on November 24, 2008, unless the USPTO receives comments that would result in a contrary determination.

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

- *E-mail:* Calib.Garland@uspto.gov.
- *Fax:* (571) 273-6247, marked to the attention of J.R. Garland.
- *Mail:* Calib P. Garland, Jr., Director of Security and Safety, United States Patent and Trademark Office, 551 John Carlyle Street 1A21, Alexandria, VA 22314.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

All comments received will be available for public inspection at the Federal rulemaking portal located at www.regulations.gov and on the USPTO Web site at www.uspto.gov.

FOR FURTHER INFORMATION CONTACT: Calib P. Garland, Jr., Director, Office of Security and Safety, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, (571) 272-8000.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) proposes to revise an existing system of records that is subject to the Privacy Act of 1974. The system is entitled "COMMERCE/PAT-TM-18 USPTO Identification and Security Access Control Systems," and was last published on December 14, 2004 (69 FR 74502). This system maintains information to produce photo identification cards for access to USPTO facilities as well as for building security, for identifying the bearer of the card as a Federal employee or contractor, for changing access permissions on cards, and for tracking stolen or lost cards. The system of records is being revised to describe the additional types of information being collected by the USPTO as required by Homeland Security Presidential Directive 12 (HSPD-12) "Policy for a Common

Identification Standard for Federal Employees and Contractors" (August 27, 2004), which mandates a common identity standard for Federal employees and contractors on duty for more than six months.

The revised system of records is being renamed "COMMERCE/PAT-TM-18 USPTO Personal Identification Verification (PIV) and Security Access Control Systems" and is published in its entirety below.

COMMERCE/PAT-TM-18

SYSTEM NAME:

USPTO Personal Identification Verification (PIV) and Security Access Control Systems.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Office of Corporate Services, Office of Security and Safety, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All agency employees, contractors, consultants, and volunteers who require routine, long-term access (180 days or more) to USPTO facilities, information technology systems, and networks. At its discretion, the USPTO may include short-term employees and contractors in the PIV ID program and, therefore, inclusion into the USPTO Personal Identification Verification and Security Access Control System (PIVSACS). The system does not apply to occasional visitors or short-term guests. The USPTO will issue temporary identification and credentials for those purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment records maintained in the PIVSACS and on individuals applying for the PIV program and a PIV credential through the USPTO HSPD-12 system contained within the PIVSACS include the following data fields: Full name; Social Security number; employee ID number, date of birth; current address; digital color photograph; fingerprints; biometric template (two fingerprints); organization; employee affiliation; work e-mail address; work telephone number(s); copies of identity source documents; employee status; foreign national status; federal emergency response official status; results of background check; Government agency code; and PIV card issuance location. Records in the PIV ID Management System (IDMS) needed for credential management for enrolled individuals in

the PIV program include: PIV card serial number; digital certificate(s) serial number; PIV card issuance and expiration dates; PIV card PIN; Cardholder Unique Identifier (CHUID); and card management keys.

Individuals enrolled in the USPTO PIVSACS will be issued a PIV card. The PIV card contains the following mandatory visual personally identifiable information: Name, photograph, employee affiliation, PIV card issue and expiration date, agency card serial number, and color-coding for employee affiliation. The card also contains an integrated circuit chip which is encoded with the following mandatory data elements which comprise the standard data model for PIV logical credentials: PIV card PIN, cardholder unique identifier (CHUID), PIV authentication digital certificate, and two fingerprint biometric templates. The PIV data model may be optionally extended to include the following logical credentials: Digital certificate for digital signature, digital certificate for key management, card authentication keys, and card management system keys. All PIV logical credentials can only be read by machine.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 35 U.S.C. 2; E.O. 9397; Federal Information Security Management Act (Pub. L. 107-296, Sec. 3544); E-Government Act (Pub. L. 107-347, Sec. 203); Government Paperwork Elimination Act (Pub. L. 105-277, 44 U.S.C. 3504); Homeland Security Presidential Directive 12 (HSPD-12) "Policy for a Common Identification Standard for Federal Employees and Contractors" (August 27, 2004).

PURPOSE(S):

The primary purposes of the system are to ensure the safety and security of USPTO facilities, systems, or information, and of facility occupants and users; to provide for interoperability and trust in allowing physical access to individuals entering other Federal facilities; and to allow logical access to USPTO information systems, networks, and resources.

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 the USPTO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. To the Department of Justice when:
 - (1) The agency or any component

thereof; (2) any employee of the agency in his or her official capacity; (3) any employee of the agency in his or her individual capacity where the agency or the Department of Justice has agreed to represent the employee; or (4) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

b. To a court or adjudicative body in a proceeding when: (1) The agency or any component thereof; (2) any employee of the agency in his or her official capacity; (3) any employee of the agency in his or her individual capacity where the agency or the Department of Justice has agreed to represent the employee; or (4) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

c. Except as noted on Forms SF 85, SF 85-P, and SF 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

d. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

e. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

f. To agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Federal Information Security Management Act (Pub. L. 107-296), and associated Office of Management and Budget (OMB) policies, standards and guidance from the National Institute of Standards and Technology, and the General Services Administration.

g. To a Federal, state, local, or international agency, or tribal or other public authority, on request, in connection with the hiring or retention of an employee, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision.

h. To the OMB when necessary to the review of private relief legislation pursuant to OMB Circular No. A-19.

i. 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 enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; Executive Order 12333 or any successor order; and applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

j. To designated agency personnel for controlled access to specific records for the purposes of performing authorized audit or authorized oversight and administrative functions. All access is controlled systematically through authentication using PIV credentials based on access and authorization rules for specific audit and administrative functions.

k. To the Office of Personnel Management in accordance with the agency's responsibility for evaluation of Federal personnel management.

l. To the Federal Bureau of Investigation for the National Criminal History check.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic files.

RETRIEVABILITY:

Records may be retrieved by name of the individual, Cardholder Unique Identification Number, employee ID, and/or by any other unique individual identifier.

SAFEGUARDS:

Consistent with the requirements of the Federal Information Security Management Act (Pub. L. 107-296) and associated OMB policies, standards and guidance from the National Institute of Standards and Technology, and the General Services Administration, the USPTO Office of Security and Safety protects all records from unauthorized access through appropriate administrative, physical, and technical safeguards. Access is restricted on a "need to know" basis, utilization of PIV card access, secure network access, and card readers on doors and approved storage containers. The building has security guards and secured doors. All entrances are monitored through electronic surveillance equipment. The hosting facility is supported by 24/7 onsite hosting and network monitoring by trained technical staff. Physical security controls include indoor and outdoor security monitoring and surveillance; badge and picture ID access screening; and pincode access screening. Personally identifiable information is safeguarded and protected in conformance with all Federal statutory and OMB guidance requirements. All access has role-based restrictions, and individuals with access privileges have undergone vetting and suitability screening. All data is encrypted in transit. The USPTO will maintain an audit trail and perform random periodic reviews to identify unauthorized access. Persons given roles in the PIV process must be approved by the USPTO and complete training specific to their roles to ensure they are knowledgeable about how to protect personally identifiable information.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules. The records on government employees and contractor employees are retained for the duration of their employment at the USPTO. Other individuals' records are kept for the duration of their affiliation with the USPTO and then treated as employee

records. The records on separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security and Safety, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above. When requesting notification of or access to records covered by this notice, requesters should provide the appropriate information in accordance with the inquiry provisions appearing in 37 CFR part 102, subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager at the address above. Individuals must furnish their full names for their records to be located and identified. See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102, subpart B. Requests from individuals should be addressed to the system manager at the address above. Individuals must furnish their full names for their records to be located and identified. See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Employees, contractors, and other applicants, and those authorized by the subject individuals to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 16, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8-25279 Filed 10-22-08; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Defense Information Systems Agency (DISA) Performance Review Board. The Performance Review Board provides a fair and impartial review of Senior Executive Service (SES) Performance appraisals and makes recommendations to the Acting Director, Defense Information Systems Agency, regarding final performance ratings and performance awards for DISA SES members.

DATES: *Effective Date:* Upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Patti Wai, SES Program Manager, Defense Information Systems Agency, P.O. Box 4502, Arlington, Virginia 22204-4502, (703) 607-4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4214(c)(4), the following are the names and titles of DISA career executives appointed to serve as members of the DISA Performance Review Board. Appointees will serve one-year terms, effective upon publication of this notice.

Mr. John J. Penkoske, Jr., Director, Manpower, Personnel, and Security, DISA, Chairperson.

Ms. Paige R. Atkins, Director, Defense Spectrum Organization, DISA, Member.

Mr. Anthony S. Montemarano, Component Acquisition Executive, DISA, Member.

Mr. Jimaye H. Sones, Chief Financial Executive/Comptroller, DISA, Member.

Dated: October 15, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-25301 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences.

ACTION: Quarterly Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences (USU).

DATES: Tuesday, November 18, 2008, from 8:30 a.m. to 1 p.m.

ADDRESSES: Board of Regents Conference Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Official, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301-295-3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held August 5, 2008; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of masters and doctoral degrees in nursing, the biomedical sciences and public health. The President, USU; Dean, USU School of Medicine; Dean, USU Graduate School of Nursing; Director, Armed Forces Radiobiology Research Institute; Director, Military Cancer Institute; and the President, USU Faculty Senate will also present reports. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165) and the availability of space, this meeting is completely open to the public. Seating is on a first-come basis.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address listed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered

by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the November 2008 meeting or at a future meeting.

Dated: October 15, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E8-25300 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee Meeting Notice

AGENCY: Defense Threat Reduction Agency, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics; Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (Hereafter referred to as the Committee).

DATES: Thursday, December 18, 2008, (8 a.m. to 4 p.m.) and Friday, December 19, 2008, (10 a.m. to 11:30 a.m.).

ADDRESSES: Defense Threat Reduction Agency, Defense Threat Reduction Center Building, Conference Room G, Room 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060-6201, and the USD (AT&L) Conference Room (3A912A), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060-6201; E-mail: eric.wright@dtra.mil; Phone: (703) 767-4759; Fax: (703) 767-5701.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (WMD), chemical and biological defense, transformation

of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

Meeting Agenda: The Committee will receive summaries of current activities related to combating WMD as well as nuclear deterrent transformation activities from the USD AT&L, ATSD (NCB) and Director of DTRA. Panel summaries from five ad-hoc working Panels (Chemical-Biological Warfare Defense, Systems and Technology, Combating Weapons of Mass Destruction, Nuclear Deterrent Transformation, and Intelligence) will be provided for committee discussion.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the Office of the DoD General Counsel, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section § 552b(c)(1) of title 5, United States Code.

Written Statements: Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: October 15, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E8-25303 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2008-OS-0129]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice in its existing 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 November 24, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767-5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 15, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

S100.60 GC

SYSTEM NAME:

Claims and Litigation (November 16, 2004, 69 FR 67112).

CHANGES:

Change system ID to "S170.05."

SYSTEM NAME:

Delete entry and replace with "Claims and Litigation Files."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records collected and maintained include individual's name, home or

business address, telephone numbers, details of the claim or litigation, and settlement, resolution, or disposition documents.”

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with “5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 2386, Copyrights, patents, designs, etc.; acquisition; 28 U.S.C. 514, Legal services on pending claims in departments and agencies; 28 U.S.C. 1498, Patents and Copyright Cases; 31 U.S.C., Chapter 37, Claims; 35 U.S.C., Chap. 28, Infringement of Patent.”

PURPOSE(S):

Delete entry and replace with “To represent DLA in claims and litigation.”

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with “Claim records are destroyed 6 years and 3 months after final settlement. Litigation files are destroyed 6 years after case closing except that patent infringement litigation files are destroyed after 26 years and copyright infringement files are destroyed after 56 years.”

* * * * *

S170.05

SYSTEM NAME:

Claims and Litigation Files.

SYSTEM LOCATION:

Office of the General Counsel, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221, and the General Counsel Offices at the Defense Logistics Agency Field Activities. Addresses may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities who have filed claims or litigation against the Defense Logistics Agency (DLA) or against whom DLA has initiated such actions. The system may also include claims and litigation filed against or on behalf of other federal agencies that are serviced by or receive legal support from DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records collected and maintained include individual's name, home or business address, telephone numbers, details of the claim or litigation, and settlement, resolution, or disposition documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 2386, Copyrights, patents, designs, etc.; acquisition; 28 U.S.C. 514, Legal services on pending claims in departments and agencies; 28 U.S.C. 1498, Patents and Copyright Cases; 31 U.S.C., Chapter 37, Claims; 35 U.S.C., Chap. 28, Infringement of Patent.

PURPOSE(S):

To represent DLA in claims and litigation.

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 Federal, state, and local agencies authorized to investigate, audit, act on, negotiate, adjudicate, represent, or settle claims or issues arising from litigation.

To agencies, entities, or individuals who have or are expected to have information concerning the claims or litigation at issue.

To the Internal Revenue Service for address verification or for matters under their jurisdiction.

To Federal, state, and local government agencies or other parties involved in approving, licensing, auditing, or otherwise having an identified interest in intellectual property issues.

To defense contractors who have an identified interest in intellectual property at issue.

The DOD “Blanket Routine Uses” apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Claim records are destroyed 6 years and 3 months after final settlement. Litigation files are destroyed 6 years after case closing except that patent infringement litigation files are destroyed after 26 years and copyright infringement files are destroyed after 56 years.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221 and the General Counsel at the Defense Logistics Agency Field Activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Individuals must provide name of litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Individuals must provide name of litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-25274 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of Secretary****[Docket ID: DoD-2008-OS-0130]****Privacy Act of 1974; System of Records****AGENCY:** National Security Agency/Central Security Service, DoD.**ACTION:** Notice to amend system of records.

SUMMARY: The National Security Agency/Central Security Service is proposing to amend an exempt system of records to its existing 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 November 24, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755-6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688-6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 15, 2008.

Patricia Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

GNSA 04**SYSTEM NAME:**

NSA/CSS Military Reserve Personnel Data Base (February 22, 1993, 58 FR 10531).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "NSA/CSS Military Reserve Personnel Data".

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add at beginning of paragraph "Name, Social Security Number (SSN), address, phone number."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Sections 115, 331-335; and Chapters 1002, 1005, 1007, and 1201-1805; DoD Directive 5100.20, National Security Agency and Central Security Service; DoD Instruction 3305.8, Management and Administration of the Joint Reserve Intelligence Program; NSA/CSS Policy 4-27, NSA/CSS Military Reserve Program Policy Manual and E.O. 9397 (SSN)".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "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).

The DoD 'Blanket Routine Uses' published at the beginning of the NSA/CSS's compilation of record systems also apply to this record system".

STORAGE:

Delete entry and replace with "Paper records in file folders and electronic storage media".

RETRIEVABILITY:

Delete entry and replace with "By name and Social Security Number (SSN)".

SAFEGUARDS:

Delete entry and replace with "Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection."

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroy upon separation of the individual from the Agency or the Reserve Program".

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "NSA Reserve Forces Director, National Security Agency/Central Security Service, Ft. George Meade, MD 20755-6000".

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Office, 9800 Savage Road, Ft. George G. Meade, MD 20755-6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Office, 9800 Savage Road, Ft. George G. Meade, MD 20755-6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Office, 9800 Savage Road, Ft. George G. Meade, MD 20755-6000".

* * * * *

GNSA 04**SYSTEM NAME:**

NSA/CSS Military Reserve Personnel Data.

SYSTEM LOCATION:

Primary location: National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

Decentralized segments: Each staff, line, field element and military service as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inactive duty military reserve personnel assigned to NSA mobilization billets, requesting to perform on-the-job training in NSA work centers, or scheduled to attend formal and resident courses of instruction under the auspices or sponsorship of NSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), address, phone number; correspondence, papers, and forms relating to individual's service extracted

from his/her military personnel records including but not limited to military service, enlistment or related service agreement/extension/orders, active duty records; duty status, reserve status; qualifications for active military duty assignments; clearance data; applications/nominations for assignments; pictures; military check-in/out sheets; military skill specialty evaluation data; active duty training; service record brief, military personnel utilization survey; correspondence courses, educational/academic records; applications for I.D.; efficiency or fitness records; application/prior service enlistment documents; work experiences; professionalization documentation; achievement certificates, suggestions; personnel screening and evaluation records; acknowledgment of service requirements; temporary disability record; change of name; documents relating to promotion or non-selection, transfers, leave, pay entitlements, financial records, awards, health or medical records, reports of proceedings of physical fitness boards, birth certificates, citizenship statements and status; passport, questionnaire/records of security clearances, language capability, language proficiency questionnaire; flight records, aviator flight records, instrument certification papers; reduction in grade release, retirement, temporary duty, record of retirement points; correspondence and/or orders relating to dependents, service action, federal recognition orders, correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement and discipline.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Sections 115, 331–335; and Chapters 1002, 1005, 1007, and 1201–1805; DoD Directive 5100.20, National Security Agency and Central Security Service; DoD Instruction 3305.8, Management and Administration of the Joint Reserve Intelligence Program; NSA/CSS Policy 4–27, NSA/CSS Military Reserve Program Policy Manual and E.O. 9397 (SSN).

PURPOSE(S):

To maintain current and accurate listings of reserve personnel designated to mobilize with the National Security Agency, offered as nominees for NSA Mobilization billets, requesting formal and resident training courses, or seeking on-the-job training in NSA work centers. To determine professional and technical

qualifications of reservists to analyze their training needs and to ascertain the eligibility of reservists for promotions, awards, special duty assignments, and similar reasons.

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).

The DoD 'Blanket Routine Uses' published at the beginning of the NSA/CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name and Social Security Number (SSN).

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Destroy upon separation of the individual from the Agency or the Reserve Program.

SYSTEM MANAGER(S) AND ADDRESS:

NSA Reserve Forces Director, National Security Agency/Central Security Service, Ft. George Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individual reservists and service reserve personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E8–25298 Filed 10–22–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Termination of Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: 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 102–3.65, the Department of Defense gives notice that it is terminating the United States European Command Senior Advisory Group as of September 30, 2008. The United States European Command Senior Advisory Group is a discretionary federal advisory committee that is being terminated pursuant to section 906(b) of Public Law 110–181.

FOR FURTHER INFORMATION CONTACT:
Frank Wilson, DoD Committee
Management Officer, 703-601-2554.

Dated: October 15, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.
[FR Doc. E8-25305 Filed 10-22-08; 8:45 am]
BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF-2008-0023]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force is proposing to add a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on November 24, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCX, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696-7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted October 9, 2008, to the House Committee on Government Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 15, 2008.

Patricia Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

F036 AFMC K DoD

SYSTEM NAME:

National Defense Science and Engineering Graduate Fellowship Program Records.

SYSTEM LOCATION:

American Society for Engineering Education (ASEE), 1818 N Street, NW., Suite 600, Washington, DC 20036-2479.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

University students (U.S. citizens only) are pursuing graduate degrees in science and engineering fields critical to Department of Defense requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, resident state, mailing address, e-mail address, and telephone numbers, date and place of birth, citizenship, Selective Service registry, undergraduate institution(s), attendance dates, major studies, degree(s) (earned/expected), grade point average (GPA), area of specialization, proposed graduate institution, lists of publications and presentations, awards and honors, professional experiences, scientific and research experiences, leadership experiences, teamwork experiences, professional and academic goals, academic references, Graduate Record Examination (GRE) Registration Number and Test Scores, and university transcripts.

For students awarded and accepting fellowships: Social Security Number (SSN) and bank account number to allow direct deposit of stipends and reporting to the Internal Revenue Service (IRS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, 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; 10 U.S.C. 2191, Graduate fellowships; 32 CFR Part 168a, National Defense Science and Engineering Graduate Fellowships; and E.O. 9397 (SSN).

PURPOSE:

To maintain documentation of the applications and processes necessary to screen applicants and to evaluate and select the most promising students to award fellowships. Approximately 200 3-year awards are made each year. The American Society for Engineering Education will pay stipends to awardees

and tuition to individuals' graduate education institutions for 3 years and maintain records of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND 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 American Society for Engineering Education to comply with statutory requirements. This will include information necessary to pay stipends by direct deposit, provide required reports to the IRS and pay tuitions to students' graduate education institutions.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Three years for applicant files not awarded fellowships. Ten years for applicant files awarded fellowships. Records are destroyed by incineration and files stored on CD ROMs are shredded.

SYSTEM MANAGER AND ADDRESS:

Department of Air Force, National Defense Science and Engineering Graduate Fellowship Program Manager, AFRL/AFOSR/PIE, Air Force Office of Scientific Research, 875 North Randolph Street, Suite 325, Room 3112, Arlington, VA 22203-1768.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to American Society for Engineering Education, the National Defense Science and Engineering Graduate Fellowship Program, 1818 N St., NW., Washington, DC 20036-2479.

Written requests should contain individual's name, e-mail and mailing address, and bear the signature of the requester.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in the system of records should address written inquiries to American Society for Engineering Education, The National Defense Science and Engineering Graduate Fellowship Program, 1818 N St., NW., Washington, DC 20036-2479.

Written requests should contain individual's name, e-mail and mailing address, and bear the signature of the request.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; information is obtained from applicants, their references, and universities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-25273 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Department of the Air Force**

[Docket ID: USAF-2008-0024]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice To Add a System of Records Notice.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on November 24, 2008 unless comments

are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCX, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696-7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems 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. 522a(r) of the Privacy Act of 1974, as amended, was submitted on October 10, 2008, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 15, 2008.

Patricia Toppings,

Federal Register Liaison Officer, Department of Defense.

F036 AETC R**SYSTEM NAME:**

Air Force Recruiting Information Support System (AFRISS) Records.

SYSTEM LOCATION:

Headquarters, Air Force Recruiting Service, Directorate, Division, Branch, 550 D Street West, Suite 1, Randolph AFB, TX 78150-4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective Air Force enlisted and officer personnel entering Active, Guard and Reserve duty and Air Force enlisted personnel on recruiting duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), scores on all qualification tests, mailing address, educational level, prior service history, age, sex, race, marital status, and number of dependents physical job qualifications, job preferences, jobs offered and accepted, recruiting and processing locations, education data, dates of processing, and other personal data relevant to the recruitment process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting Campaigns, and Air Education and Training Command Instruction 36-2002, Recruiting Procedures for the Air Force; and E.O. 9397(SSN).

PURPOSE(S):

The system will provide field recruiters an automated tool to process prospective Active, Guard and Reserve applicants; evaluate recruiter's and job counselor's activity and efficiency levels; and analyze pre-enlistment job cancellations for common reasons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552A(b) of the Privacy Act of 1974, these records or information contained therein may be specifically disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed only by person(s) responsible with a need to know for servicing the system of records in performance of their official duties and those authorized personnel who are properly screened and cleared. Access to the system utilizes encryption software. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Enlistment processing records, recruiter personnel records, and personal interview records (PIR) are archived and later destroyed after no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations Division, Headquarters, Air Force Recruiting Service, 550 D Street West, Suite 1, Randolph AFB, TX 78150-4527.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves

is contained in this system of records should address written inquiries to the Operations Division, Headquarters, Air Force Recruiting Service, 550 D Street West, Suite 1, Randolph AFB, TX 78150-4527.

Request must contain full name, Social Security Number, and current mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to or may visit the Operations Division, Headquarters, Air Force Recruiting Service, 550 D Street West, Suite 1, Randolph AFB, TX 78150-4527, Monday through Friday between the hours of 8 a.m. and 4 p.m. Identification is required.

Request must contain full name, Social Security Number, and current mailing address.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Instruction 33-332, Privacy Act Program, 32 CFR Part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-25295 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Fall Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102-3.140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: November 5-6 2008.

Time(s) of Meeting: 0800-1700, November 5, 2008, 0800-1700, November 6, 2008.

Place of Meeting—Huntsville Marriott, 5 Tranquility Base, Huntsville, AL 35805.

FOR FURTHER INFORMATION CONTACT: For information, please contact Ms. Vivian Baylor at vivian.baylor@hqda.army.mil or at 703-604-7472 or Mr. Justin Bringham at justin.bringhurst@us.army.mil or at 703-604-7468. Written submissions are to be submitted to the following address: Army Science Board, ATTN: Designated Federal Officer, 2511 Jefferson Davis Highway, Suite 11500, Arlington, VA 22202-3911.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The Army Science Board will meet on November 5-6, 2008. Purpose of the meeting 5 November is to welcome new members to the Board, conduct annual required ethics training, and to conduct routine board administrative functions. Briefings of interest on science and technology will be provided by Army staff on 6 November at Redstone Arsenal.

Filing Written Statement: Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address listed (see **FOR FURTHER INFORMATION CONTACT** section). Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the subcommittees until its next meeting.

The DFO will review all timely submissions with the subcommittee Chairs and ensure they are provided to the specific subcommittee members before the meeting. After reviewing written comments, the subcommittee Chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the subcommittee Chairs, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

Additional Comments: Due to scheduling difficulties the Army Science Board was unable to finalize its agenda in time to publish notice of its meeting in the **Federal Register** for the 15-calendar days required by 41 CFR 102-3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41

CFR 102-3.150(b), waives the 15-calendar day notification requirement.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8-25282 Filed 10-22-08; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF DEFENSE

Department of Army

[Docket ID: USA-2008-0076]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records in its existing 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 November 24, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Army, Records Management and Declassification Agency, Privacy Division, 7701 Telegraph Road, Alexandria, VA 22315.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428-6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices 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 Department of Army proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: October 15, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

A055-355 MTMC

SYSTEM NAME:

Personal Property Movement and Storage Records (February 1, 1996, 61 FR 3685).

REASON:

These records are now covered under notice F024 AF USTRANSCOM B DoD,

DoD Transportation Repository Records (June 12, 2008, 73 FR 33413).

[FR Doc. E8-25272 Filed 10-22-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. U.S. Patent No. 7,427,947: Aircrew Aid To Assess Jam Effectiveness, Navy Case No. 98516.

ADDRESSES: Requests for copies of the inventions cited should be directed to Naval Air Warfare Center Weapons Division, Code 4L4400D, 1900 N. Knox Road, Stop 6312, China Lake, CA 93555-6106 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT:

Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 4L4400D, 1900 N. Knox Road, Stop 6312, China Lake, CA 93555-6106, telephone: 760-939-1074, facsimile: 760-939-1210, e-mail: michael.seltzer@navy.mil.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.7)

Dated: October 15, 2008.

T.M. Cruz,

*Lieutenant Commander, Judge Advocate
Generals Corps, U.S. Navy, Federal Register
Liaison Officer.*

[FR Doc. E8-25275 Filed 10-22-08; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive licenses to practice worldwide under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and

market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Patent application Serial Number 11/700,970 "INTERIM DENTAL DRESSING AND RESTORATIVE MATERIAL" filed 1/24/2007; 11/726,203 "METHOD FOR THE DETECTION OF TARGET MOLECULES BY FLUORESCENCE POLARIZATION USING PEPTIDE MIMICS" filed on 3/13/2007; 11/789,122 "RECOMBINANT ANTIGENS FOR DIAGNOSIS AND PREVENTION OF MURINE TYPHUS" filed on 4/19/2007; 11/800,955 "SECRETED CAMPYLOBACTER FLAGELLA COREGULATED PROTEINS AS IMMUNOGENS" filed on 5/8/2007; 11/800,948 "MULTIFUNCTIONAL BLOOD SUBSTITUTE (MBS)" filed on 5/8/2007; 11/881,498 "RECOMBINANT ANTIGENS FOR DIAGNOSIS AND PREVENTION OF MURINE TYPHUS (Murine typhus Ompb derived An and K fragments (similar to r56))" filed on 7/27/2007; 11/839,922 "VASCULAR SHUNT CREATED FROM PTFE (POLYTETRAFLUOROETHYLENE) OR OTHER NOVEL NON-COAGULATIVE MATERIALS" filed on 8/16/2007; 11/842,438 "METHODS FOR PROTECTING AGAINST LETHAL INFECTION WITH BACILLUS ANTHRACIS" filed on 8/21/2007; 11/876,997 "ORIENTIA TSUTSUGAMUSHI TRUNCATED RECOMBINANT OUTER MEMBRANE PROTEIN (r47 AND r57) VACCINES DIAGNOSTICS AND THERAPEUTICS FOR SCRUB TYPHUS AND HIV INFECTIONS" filed on 10/23/2007; 11/982,488 "DENGUE DNA OR PIV-LAV PRIME-BOOST VACCINATION AGAINST DENGUE VIRUS INFECTION" filed on 11/2/2007; 11/942,402 "METHODS FOR PROTECTION AGAINST LETHAL INFECTION WITH BACILLUS ANTHRACIS" filed on 11/19/2007; 11/942,343 "METHODS FOR PROTECTION AGAINST LETHAL INFECTION WITH BACILLUS ANTHRACIS" filed on 11/19/2007; 12/001,598 "IDENTIFICATION OF ANTIGENS FOR DIAGNOSIS AND PREVENTION OF Q FEVER (RECOMBINANT ANTIGENS FOR THE DETECTION OF COXIELLA BURNETII)" filed on 12/11/2007; 12/001,599 "IDENTIFICATION OF ANTIGENS FOR DIAGNOSIS AND PREVENTION OF Q FEVER (RECOMBINANT ANTIGENS FOR THE DETECTION OF COXIELLA BURNETII)" filed on 12/11/2007; 11/964,982 "EXPRESSION AND

REFOLDING OF TRUNCATED RECOMBINANT MAJOR OUTER MEMBRANE PROTEIN ANTIGEN (R56) OF ORIENTIA TSUTSUGAMUSHI AND ITS USE IN ANTIBODY BASED DETECTION ASSAYS AND VACCINES" filed on 12/27/2007; 11/965,004 "EXPRESSION AND REFOLDING OF TRUNCATED RECOMBINANT MAJOR OUTER MEMBRANE PROTEIN ANTIGEN (R56) OF ORIENTIA TSUTSUGAMUSHI AND ITS USE IN ANTIBODY BASED DETECTION ASSAYS AND VACCINES" filed on 12/28/2007; 11/971,433 "ADENOVIRAL VECTOR-BASED MALARIA VACCINE" filed on 1/9/2008; 11/988,598 "ADHESIN-ENTEROTOXOID CHIMERA VACCINE FOR ENTEROTOXIGENIC ESCHERICHIA COLI" filed on 1/10/2008; 12/103,112 "RECYCLING CONTAINER (TO MINIMIZE RELEASE OF Hg VAPOR) FOR THE COLLECTION AND TEMPORARY STORAGE OF MERCURY CONTAMINATED WASTES IN THE DENTAL OPERATORY" filed on 4/15/2008; 12/163,412 "FLUORESCENCE POLARIZATION INSTRUMENTS AND METHODS FOR DETECTION OF EXPOSURE TO BIOLOGICAL MATERIALS BY FLUORESCENCE POLARIZATION IMMUNOASSAY OF SALIVA OR ORAL FLUID" filed on 6/27/2008; 12/221,150 "CAPSULE COMPOSITION FOR USE AS IMMUNOGEN AGAINST CAMPYLOBACTER JEJUNI" filed on 7/25/2008; 61/025,045 "MULTIFUNCTIONAL ACRYLATES USED AS CROSS-LINKERS IN DENTAL AND BIOMEDICAL SELF-ETCH BONDING ADHESIVES" filed on 1/31/2008; 61/036,666 "VACCINE AND IMMUNIZATION METHOD AGAINST MALARIA CONTAINING PLASMODIUM ANTIGEN 2" filed on 3/14/2008; 61/054,022 "RECOMBINANT CHIMERIC ANTIGENS FOR DIAGNOSIS AND PREVENTION OF SCRUB TYPHUS" filed on 5/16/2008; 61/057,855 "NANOPARTICLE ENCAPSULATED ANTIBIOTICS FOR CRANIAL IMPLANTATION PATIENTS" filed on 6/1/2008; 61/059,382 "RECOMBINANT ANTIGENS FOR DIAGNOSIS AND PREVENTION OF SPOTTED FEVER RICKETTSIAE" filed on 6/6/2008; 61/079,535 "COMPOSITION AND METHOD FOR THE INDUCTION OF IMMUNITY AGAINST BACILLUS CEREUS GROUP BACTERIA" filed on 7/10/2008.

DATES: Applications for a non-exclusive, exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit application to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500, telephone 301-319-7428 or E-Mail: Charles.schlagel@med.navy.mil.

Dated: October 16, 2008.

T.M. Cruz,

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

[FR Doc. E8-25277 Filed 10-22-08; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 24, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by email to oira_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 17, 2008.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Revision.

Title: Charter Schools Program (CSP)

Grant Award Database.

Frequency: Annually.

Affected Public:

Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 68.

Burden Hours: 110.

Abstract: This request is for renewal of OMB approval to collect data necessary for the Charter Schools Program (CSP) Grant Award Database. This current data collection is being coordinated with the EDFacts initiative to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED) through the Education Data Exchange Network (EDEN). Specifically, under the current data collection, ED collects CSP grant award information from grantees (State agencies and some schools) to create a new database of current CSP-funded charter schools and award amounts. Once complete, ED merges performance information extracted from the EDEN database with the database of CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic performance, financial integrity, and program effectiveness.

Requests for copies of the information collection submission for OMB review

may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3780. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8-25287 Filed 10-22-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 17, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99-301-226.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits an amendment to two (2) Rate Schedule FTS-1 negotiated rate agreements with Wisconsin Public Service Corp, to be effective 11/1/08.

Filed Date: 10/15/2008.

Accession Number: 20081017-0047.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: RP08-392-003.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Original Sheet 1 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 10/14/2008.

Accession Number: 20081015-0187.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: RP09-19-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co submits 24 Revised Sheet 62 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1.

Filed Date: 10/14/2008.

Accession Number: 20081015–0189.
Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: RP09–20–000.
Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co submits Substitute 79 Revised Sheet 53 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1.

Filed Date: 10/14/2008.

Accession Number: 20081015–0188.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: CP08–89–001.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits Fifty-Sixth Revised Sheet 16, *et al.*, to FERC Gas Tariff, Second Revised Volume 1, in compliance with FERC's 7/25/08 Order, to be effective 11/17/08.

Filed Date: 10/10/2008.

Accession Number: 20081014–0283.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–25237 Filed 10–22–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2006–3; FRL–8732–8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Louisville Gas and Electric Company—Trimble County Generating Station; Bedford (Trimble County), KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed a Partial Order, dated September 10, 2008, partially granting and partially denying a petition to object to a state operating permit issued by the Kentucky Division for Air Quality (KDAQ) to Louisville Gas and Electric Company (LG&E) for its Trimble County Generating Station located in Bedford, Trimble County, Kentucky. This Partial Order constitutes a final action on the petition submitted by Save the Valley, Sierra Club, and Valley Watch (Petitioners) on March 2, 2006. Pursuant to section 505(b)(2) of the CAA, any person may seek judicial review of the Order in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307(b) of the Act.

ADDRESSES: Copies of the Partial Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Partial Order is also available electronically at the following address: <http://www.epa.gov/region7/programs/>

air/title5/petitiondb/petitions/lg&e_decision2006.pdf.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or hofmeister.art@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 766 1–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted the first of two petitions regarding the LG&E Trimble County Generating Station on March 2, 2006, requesting that EPA object to Revision 2 to the LG&E merged prevention of significant deterioration and title V operating permit. The second petition, regarding Revision 3 to the merged permit, was submitted on April 29, 2008. Pursuant to an agreement between EPA and the Petitioners, the September 10, 2008, Partial Order responded only to those issues raised in the March 2006 petition that were unaffected by Revision 3 to the LG&E permit. Thus, the September 10, 2008, Order is a partial order. EPA will be responding to the remainder of the issues raised in the two petitions by March 29, 2009, consistent with the agreement reached between EPA and the Petitioners. The September 10, 2008, Partial Order addresses the following issues where Petitioners allege that the merged permit is inconsistent with the CAA: (1) The mercury limits do not represent the best available control technology (BACT); (2) the opacity and visible emissions limits are not BACT; (3) the permit fails to contain conditions requiring BACT during periods of startup and shutdown; (4) the emission limits at various support facilities are not BACT; (5) the compliance provisions contained in the statement of basis are not a part of the permit; (6) the compliance assurance monitoring provisions related to volatile organic compound (VOC) limits are not adequate to ensure compliance; (7) the

limits for toxic substances are not enforceable; (8) the limits for lead are not enforceable; (9) the limits for VOC are not enforceable; (10) "startup and shutdown" and "good combustion control" are not defined; and (11) the permit raises general concerns.

The September 10, 2008, Partial Order explains EPA's rationale for granting the petition with respect to the issues summarized in numerals 3 and 7, above. The Partial Order also describes the basis for denying the petition with respect to the remaining issues listed above.

A second partial order will follow that addresses the remaining outstanding issues from the March 2006 petition, as well as the April 2008 petition, and it will undergo the same **Federal Register** procedures as this Partial Order.

Dated: October 10, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E8-25163 Filed 10-22-08; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 17, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before December 22, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov and/or to Cathy.Williams@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418-2918 or send an e-mail to PRA@fcc.gov and/or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Forms 1210 and 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: \$2,034,375.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection.

Needs and Uses: Cable operators use Form 1210 to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities.

Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs. Cable operators submit Form 1240 to their respective local franchising authorities ("LFAs") to justify rates for the basic service tier and related equipment or with the Commission (in situations where the Commission has assumed jurisdiction).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-25322 Filed 10-22-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, October 23, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2008-10:

VoterVoter.com by Joseph M. Birkenstock, Esquire.

Draft Advisory Opinion 2008-15: National Right to Life Committee, Inc., by James Bopp, Jr., Esquire, and Clayton J. Callen, Esquire.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Robert Biersack, Press Officer, Telephone: (202) 694-1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694-1040, at least 72 hours prior to the hearing date.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8-25045 Filed 10-22-08; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 2008.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *Banco Santander S.A.*, Boadilla, Spain, to acquire 75.1 percent of the voting shares of Sovereign Bancorp, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire Sovereign Bank, Wyomissing, Pennsylvania, and thereby engage in operating a savings and loan association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-25296 Filed 10-22-08; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Availability of the Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM): NIH Publication No. 08-6529

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Availability of the ICCVAM Biennial Progress Report.

SUMMARY: NICEATM announces the availability of the "Biennial Progress Report: Interagency Coordinating Committee on the Validation of Alternative Methods: 2006-2007." In accordance with requirements of the ICCVAM Authorization Act of 2000 (42 U.S.C. 285l-3), this report describes progress and activities during 2006-2007 by ICCVAM and NICEATM. The report is available on the NICEATM-ICCVAM Web site at <http://iccvam.niehs.nih.gov/about/ICCVAMrpts.htm>. Copies can also be requested from NICEATM at the address given below.

ADDRESSES: Requests for copies of the report should be sent by mail, fax, or email to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC-17, Research Triangle Park, NC 27709, (phone) 919-541-2384, (fax) 919-541-0947, (e-mail) niceatm@niehs.nih.gov. Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, NICEATM Director (919-541-2384 or niceatm@niehs.nih.gov).

SUPPLEMENTARY INFORMATION:

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability. ICCVAM also promotes scientific validation, regulatory acceptance, and national and international harmonization of toxicological test methods that more accurately assess safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l-3, available at http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM collaborate in evaluating new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at

the NICEATM-ICCVAM Web site (<http://iccvam.niehs.nih.gov>).

ICCVAM, NICEATM, and the Director of the NIEHS receive advice regarding statutorily mandated duties of ICCVAM and activities of NICEATM from the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM), a Federally chartered advisory committee. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at <http://ntp.niehs.nih.gov/go/167>.

Dated: October 8, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8-25223 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Guidance on Engagement of Institutions in Human Subjects Research

AGENCY: Office for Human Research Protections, Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, is announcing the availability of a guidance document entitled, "OHRP Guidance on Engagement of Institutions in Human Subjects Research." The guidance document describes: (1) Scenarios that, in general, would result in an institution being considered engaged in a human subjects research project; (2) scenarios that would result in an institution being considered not engaged in a human subjects research project; and (3) IRB review considerations for cooperative research in which multiple institutions are engaged in the same non-exempt human subjects research project. The guidance document is intended primarily for institutional review boards (IRBs), research administrators and other relevant institutional officials, investigators, and funding agencies that may be responsible for the conduct, review and oversight of human subject research that is conducted or supported by the Department of Health and Human Services (HHS).

The guidance document announced in this notice finalizes the draft guidance with the same title that was made available for public comment in the **Federal Register** on December 8,

2006 (71 FR 71169). OHRP received twenty-four comments on the draft guidance document, and those comments were considered as the guidance was finalized. The final guidance document replaces two existing OHRP guidance documents on the engagement of institutions in human subjects research: (1) The January 26, 1999, document on "Engagement of Institutions in Research," and (2) the December 23, 1999, document on "Engagement of Pharmaceutical Companies in HHS Supported Research."

DATES: Comments on OHRP guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled, "OHRP Guidance on Engagement of Institutions in Human Subjects Research," to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240-453-6909. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document. Submit written comments to **ENGAGEMENT GUIDANCE COMMENTS**, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Comments also may be sent via e-mail to ohrp@hhs.gov or via facsimile at 240-453-6909.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Kaneshiro, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; 240-453-6900; e-mail julie.kaneshiro@hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

OHRP, Office of Public Health and Science, is announcing the availability of a guidance document entitled, "OHRP Guidance on Engagement of Institutions in Human Subjects Research." HHS, through OHRP, regulates research involving human subjects conducted or supported by HHS in regulations codified at 45 CFR part 46. The HHS human subject protection regulations stipulate substantive and procedural requirements for the conduct of HHS-conducted or -supported research, including requirements for review and approval by an IRB before research involving human subjects may begin, criteria for IRB approval of research, and

requirements for informed consent or the waiver of informed consent.

The HHS protection of human subjects regulations at 45 CFR 46.103(a) and (b) require that each institution "engaged" in human subjects research that is conducted or supported by HHS (1) provide OHRP with a satisfactory assurance that the institution will comply with the regulations, and (2) certify to the HHS agency conducting or supporting the research that the research has been reviewed and approved by an IRB designated in the assurance and will be subject to continuing review by an IRB, unless all the research meets one or more of the categories for exemption from the regulatory requirements under 45 CFR 46.101(b). The Federalwide Assurance (FWA) is the only type of assurance currently accepted by OHRP. The FWA generally identifies required policies and procedures for the institution and describes the activities to which the regulations apply.

On January 26, 1999, the Office for Protection from Research Risks (OPRR), OHRP's predecessor office, issued guidance on "Engagement of Institutions in Research." OPRR later issued guidance on "Engagement of Pharmaceutical Companies in HHS Supported Research," dated December 23, 1999.

In the **Federal Register** of December 8, 2006 (71 FR 71169), OHRP announced the availability of a draft guidance document entitled, "OHRP Guidance on Engagement of Institutions in Human Subjects Research," dated October 27, 2006, which OHRP proposed would replace the two guidance documents that had been issued in 1999. OHRP received twenty-four comments on the draft guidance and those comments were considered as the guidance was finalized. See section II. Discussion of Public Comments for a summary of the main comments received and OHRP's responses.

This guidance is only applicable to HHS-conducted or -supported research projects that have been determined to involve human subjects and that are not exempt under the HHS regulations at 45 CFR 46.101(b). Once an activity is determined to involve non-exempt human subjects research, this guidance can be used to determine whether an institution involved in some aspect of the research would be considered "engaged" in human subjects research, and would thus need to (1) hold or obtain an applicable OHRP-approved FWA, and (2) certify to the HHS agency conducting or supporting the research that the research has been reviewed and approved by an IRB designated in the

assurance and will be subject to continuing review by an IRB.

II. Discussion of Public Comments

Most of the comments expressed general support for OHRP's draft guidance document. Some comments suggested clarifying changes and others recommended more substantive changes to the scenarios described in the draft guidance. All of the comments received were considered as the guidance was finalized. A discussion of the main comments follows.

Institutions Engaged in Human Subjects Research

Awardee Institutions

OHRP's draft guidance document proposed that institutions that receive an award through a grant, contract, or cooperative agreement directly from HHS for non-exempt human subjects research (i.e., awardee institutions) would generally be considered engaged in human subjects research, even where all activities involving human subjects are carried out by agents of another institution. A few of the commenters urged OHRP to reconsider its view that such awardee institutions should generally be considered engaged in human subjects research when all activities involving human subjects are carried out by agents of another institution. The commenters noted that considering such awardee institutions to be engaged in human subjects research often results in duplicative review by IRBs and administrative burden for awardee institutions that choose to modify their FWAs to rely on another institution's IRB to satisfy the regulatory requirements under 45 CFR part 46. These commenters questioned whether human subjects were offered greater protections by considering such awardee institutions to be engaged in human subjects research.

OHRP believes that institutions that receive an award directly from HHS for non-exempt human subjects research should generally be considered engaged in human subjects research. However, the office understands these commenters' concerns and agrees that in some circumstances, institutions that receive an award for non-exempt human subjects research, but that do not carry out any of the activities involving human subjects, should not be considered engaged in the human subjects research. OHRP will continue to consider this issue in consultation with the HHS funding agencies.

Institutions Not Engaged in Human Subjects Research

Release of Identifiable Private Information or Biological Specimens

In the **Federal Register** of December 8, 2006 (71 FR 71169), OHRP noted that the office was particularly interested in the public's comments on the proposal that institutions whose employees or agents release to investigators at another institution identifiable private information or identifiable biological specimens pertaining to the subjects of the research, not be considered engaged in human subjects research.

The public comments supported this proposed scenario. OHRP retained this scenario in the final guidance document, with only minor clarifying changes (see scenario B.(6) in the final guidance).

Administration of Clinical Trial-Related Medical Services

In the **Federal Register** of December 8, 2006 (71 FR 71169), OHRP also noted that the office was particularly interested in the public's comments on the proposal that institutions (including private practices) not selected as research sites whose employees or agents administer clinical trial-related medical services, not be considered engaged in human subjects research provided that specified conditions were met. One of the proposed conditions was that the institution's employees or agents do not administer the primary study interventions being tested under the protocol.

The public comments on this proposed scenario were generally supportive, but several commenters sought clarifications on some of the proposed conditions. In addition, a few of the commenters recommended that OHRP expand the scenario to permit the employees or agents of an institution not selected as a research site to administer the study intervention being tested or evaluated under the protocol, and still not consider such an institution to be engaged in human subjects research.

In the final guidance, OHRP retained the proposed scenario, with minor changes in response to the public comments (see scenario B.(2) in the final guidance). However, OHRP also has included another scenario in the final guidance that would allow employees or agents of an institution not initially selected as a research site to administer the study interventions being tested or evaluated under the protocol, provided that this occurs on a one-time or short-

term basis, and specified conditions are met (see scenario B.(3) in the final guidance). OHRP believes this is responsive to the concern raised in a public comment that research subjects are sometimes unexpectedly hospitalized or otherwise unexpectedly unable to receive a study intervention being tested or evaluated in a protocol from an institution that had previously been designated as a research site.

III. Comments

Interested persons may submit comments regarding this guidance document to OHRP at any time. Please see the **ADDRESSES** section for information on where to submit written comments.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance document on OHRP's Web site at <http://www.hhs.gov/ohrp/humansubjects/guidance/engage08.htm>.

Dated: October 16, 2008.

Ivor A. Pritchard,

Acting Director, Office for Human Research Protections.

[FR Doc. E8-25177 Filed 10-22-08; 8:45 am]

BILLING CODE 4150-36-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community-Based Abstinence Education Performance Progress Report.

OMB No.: 0970-0272.

Description: The discretionary funding Community-Based Abstinence Education Program (CBAE) is authorized by Title XI, Section 1110, of the Social Security Act (using the definitions contained in Title V, Section 510(b)(2) of the Social Security Act).

Performance Progress Report/Program Narrative

The CBAE Performance Progress Report/Program Narrative is a semiannual report form through which grantees report performance information used by the Administration for Children and Families (ACF) to evaluate each grantee's compliance with Federal law and progress toward achieving its goals. Performance information includes:

Description of major activities and accomplishments during the reporting period;

Description of deviations or departures from the original project;

Description of significant findings and events;

Description of dissemination activities;

Description of other activities; and
Description of activities planned for the next reporting period, including goals and objectives.

Program-Specific Performance Measure

The CBAE program is developing a program-specific performance measure in response to the PART review (a process by which the Office of Management and Budget analyzes and rates a Federal program's procedures and strategies for evaluating its effectiveness), for which the program received a rating of Adequate. In an effort to gather program-specific data on rates of abstinence pre- and post-program participation, ACF and the Office of Management and Budget determined that a program-specific performance measure should be developed to assess key outcomes among program participants. The CBAE office convened a panel of abstinence education experts to gather input on the measure, and, based on the input provided, the CBAE office is developing the measure. CBAE grantees will be required to ask ten to fifteen questions of the youth served in a pre- and post-survey, as well as a representative sample of the youth served in a post-post-survey.

The questions are being carefully constructed by an experienced evaluator to measure initiation and discontinuation of sexual intercourse as well as two key predictors of initiation: Sexual values and behavioral intentions.

The program office will collect and compile data to establish baselines and ambitious targets for the program-specific performance measure. The data will be aggregated and results will be shared with the public as they become available.

Respondents: Performance Progress Report/Program Narrative—Non-profit community-based organizations, faith-based organizations, schools/school districts, universities/colleges, hospitals, public health agencies, local governments, Tribal councils, small businesses/for-profit entities, housing authorities, etc. Program-Specific Performance Measure—Youth Participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Community-Based Abstinence Education Program Announcement Performance Progress Report/Program Narrative	60	2	50	6,000
Community-Based Abstinence Education Program—Program-Specific Performance Measure	1,000,000	3	0.17	510,000

Estimated Total Annual Burden Hours: 516,000

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: October 20, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8-25285 Filed 10-22-08; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0546]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Data Collection Using MedWatch^{Plus} Portal and Rational Questionnaire

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the use of MedWatch^{Plus} Portal and Rational Questionnaire to collect electronically all adverse event, consumer complaint/product problem and medication use error data submitted to FDA.

DATES: Submit written or electronic comments on the collection of information by December 22, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB

for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Data Collection Using MedWatch^{Plus} Portal and Rational Questionnaire—21 CFR 310.305, 314.80, 314.98, 514.80, 600.80, 1271.350 and Part 803

FDA is implementing electronic data collection to improve adverse event reporting across the agency. FDA's current processes and systems for adverse event reporting vary across its centers and are not optimal for the efficient collection of voluntary and mandatory adverse event reports, product problems/consumer complaints, or errors associated with the use of FDA-regulated products. Current FDA reporting forms (Forms FDA 3500, 3500A, 1932, and 1932a) are an outgrowth of a paper process era and frequently result in the submission of inconsistent and poor quality information. In addition, the agency is limited in its ability to modify its paper forms to keep pace with changes in the types of regulated products and the information necessary to meet evolving standards to ensure post market safety. Further, the existing supporting business processes are not able to efficiently manage the information being provided on the paper forms. For example, the upfront data integrity

constraints on required (vital) data limit the extent of reviewable information on items such as reporter identification of one or more subject product types (animal and human food/feed, drug - animal or human, device, etc.), reporter name, date of occurrence, related details, and follow-up information. Data collected on paper forms must be manually transcribed into an electronic format for usability and analysis. Furthermore, these forms are not very intuitive for a casual reporter (e.g., consumers of FDA-regulated products), that is, the paper forms lack the features available in an electronic system that assist a new user in understanding what information is being requested.

FDA has launched the development and implementation of a new electronic system for collecting, submitting and processing adverse event reports and other safety information for all FDA-regulated products. This new system, MedWatch^{Plus} Portal, will enhance the current MedWatch collection system and integrate the agency's existing safety reporting systems into the various FDA Adverse Event Report Systems (FAERS). FAERS will enable FDA staff to more efficiently analyze thousands of safety reports and to identify potential safety problems earlier than would be possible using paper forms. The MedWatch^{Plus} Portal provides one

central point-of-entry for persons submitting information to FDA. The agency believes that one central point-of-entry will better enable persons to submit their information. In addition, mandatory reporters will be able to use the Internet to access the MedWatch^{Plus} Portal to report safety concerns about dietary supplements, nonprescription drugs, and human and animal food, thus fulfilling the mandatory reporting requirements of the Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Pub. L. 109-462) and the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110-85).

The MedWatch^{Plus} Portal involves the development of a single Web-based portal and a user-friendly data collection tool, the "Rational Questionnaire," which will make it easy for anyone to report a safety problem. The Rational Questionnaire will ask users simple questions to help guide them to determine what information they should provide. Anyone will be able to use the questionnaire to submit adverse event, product problem/consumer complaint, and medication use error reports to the FDA. For example, a healthcare practitioner could report an adverse event; a medical device maker could report a safety concern about a product; a pet owner

could report a problem that their pet experienced associated with the use of an animal drug or animal food; a parent could report a reaction that their child experienced associated with the use of a cosmetic; and a consumer could report a concern about a drug they are taking at home, or about a food that may have made them ill. The system will compile the users' responses into a standardized report that would be routed to the appropriate FDA organizational component(s) for review and analysis.

There are several types of information that will be submitted to FDA via the MedWatch^{Plus} Portal and Rational Questionnaire. Some of the information is required to be submitted to FDA (mandatory reporting) and some of the information is submitted voluntarily (voluntary reporting). The majority of the information to be collected using the MedWatch^{Plus} Rational Questionnaire has been approved previously by OMB under the Paperwork Reduction Act. Recently, additional information collection has been mandated by DSNDCPA and FDAAA. A complete list of information collections, their current OMB approval numbers, as well as citations to the relevant statute, regulation or guidance information for each is depicted in table 1 of this document.

TABLE 1.—INFORMATION COLLECTIONS

FDA Center	FDA Form No.	OMB No.	Relevant Statute, Regulation or Guidance Information	Mandatory (M) or Voluntary (V)
CDER/CDER	3500	0910-029	MedWatch Form FDA 3500, Voluntary Reporting Instructions.	V
CDER/CDER	3500A	0910-0291	21 CFR 310.305, 314.80, 314.98, 600.80 and 1271.350.	M
CDRH	3500	0910-0291	MedWatch Form FDA 3500, Voluntary Reporting Instructions.	V
CDRH	3500A	0910-0291	21 CFR Part 803	M
CFSAN	3500	0910-0291	None	V
CFSAN*	3500A	OMB approval is in process.	Pub. L. 109-462; Section 761(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379aa-1(b)(1)).	M

TABLE 1.—INFORMATION COLLECTIONS—Continued

FDA Center	FDA Form No.	OMB No.	Relevant Statute, Regulation or Guidance Information	Mandatory (M) or Voluntary (V)
CFSAN/CVM*	None	This notice solicits comments on this proposed new collection.	Pub. L. 110–85; Section 417 of the Act (21 U.S.C. 350(f)).	M
CVM	1932a	0910–0284	Veterinary Adverse Drug Reaction, Lack of Effectiveness, or Product Defect Report Form and Instructions.	V
CVM	1932	0910–0284	21 CFR 514.80	M
CVM*	None	This notice solicits comments on this proposed new collection.	Pub. L. 110–85; Section 1002 of FDAAA.	V
ORA	None	This notice solicits comments on this proposed new collection.	None	V

* New reporting requirements included in DSND CPA and FDAAA.

The single portal and a harmonized, Web-based format for submitting safety information will greatly enhance the ability of FDA to protect the public health. FDA will analyze electronic adverse event and safety reports for all marketed products and track safety signals throughout the life cycle of FDA-regulated products. FDA intends to review the information the agency receives to ensure that the submitters

comply with the criteria established by the Federal Food, Drug, and Cosmetic Act (the act), where required.

Description of respondents: The respondents to this collection of information include all persons submitting mandatory or voluntary information electronically to FDA via the MedWatch^{Plus} Portal and Rational Questionnaire.

FDA expects that all of its centers and the Office of Regulatory Affairs (ORA) will be utilizing the electronic reporting capabilities of MedWatch^{Plus} Portal by Fiscal Year 2011. Thus, FDA has prepared its estimate of the annual reporting burden on the basis that the majority of all submissions will be submitted electronically.

FDA estimates the burden of this information collection as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN¹

FDA Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
Voluntary View	37,565	1	37,565	0.6	22,539
Mandatory View using MedWatch ^{Plus} Rational Questionnaire ²	645	199	128,403	1.0	128,403
Mandatory View using direct Gateway-to-Gateway transmission ²	2,578	199.2	513,613	0.6	308,168
Reportable Food (human and animal) Mandatory View	1,200	1	1,200	0.6	720
Reportable Food (human and animal) Voluntary View	1,200	1	1,200	0.6	720
Early Warning Recall Voluntary View	540	1	540	0.6	324
Total					460,874

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

²The reporter may choose to use the MedWatch^{Plus} Rational Questionnaire or a direct Gateway-to-Gateway transmission to submit a Mandatory report. FDA believes that these are different reporting burdens for these two types of transmission of information. The reporting burden for use of the MedWatch^{Plus} Rational Questionnaire Mandatory View is estimated to be 1 hour. The reporting burden for a direct Gateway-to-Gateway transmission is estimated to be 0.60 hours. Current reporting estimates indicate that approximately 80% of the Mandatory Reports would be submitted via a Gateway-to-Gateway transmission and 20% of reports would be received via the MedWatch^{Plus} Rational Questionnaire in the future. The Mandatory View reporting burden estimates reflect this calculation.

The term "Voluntary View" refers to the MedWatch^{Plus} Rational Questionnaire as it appears to a respondent submitting a voluntary report. The term "Mandatory View" refers to the Gateway-to-Gateway and the MedWatch^{Plus} Rational Questionnaire as it appears to a respondent submitting a mandatory report. The estimated number of responses and hours per response for the voluntary view and the mandatory view are based on FDA's experience and the average number of voluntary reports and mandatory reports submitted to FDA in 2007 (and in the case of mandatory dietary supplement reports, those submitted to FDA from January 1, 2008 to April 15, 2008) via the existing methods of submission, including paper submission. The term, "Reportable Food (human and animal) Mandatory View" refers to the MedWatch^{Plus} Rational Questionnaire as it appears to a respondent submitting a mandatory report under section 417 of the act. The term, "Reportable Food (human and animal) Voluntary View" refers to the MedWatch^{Plus} Rational Questionnaire as it appears to a respondent submitting a voluntary report under section 417 of the act. The estimated number of responses and hours per response for the reportable food (human and animal) mandatory and voluntary views are based on FDA's experience with reports recently submitted to FDA that would be considered "Reportable Food" reports in the future. The term, "Early Warning Recall Voluntary View," refers to the MedWatch^{Plus} Rational Questionnaire as it appears to a respondent submitting a mandatory report under FDAAA Section 1002 of the act (Pub. L. 110-85). The estimated number of responses and hours per response for the early warning recall voluntary view are based on FDA's experience with reports recently submitted to FDA that would be considered "Early Warning Recall" reports in the future.

In an effort to meet the needs of all reporters, the Rational Questionnaire will allow for the submission of a report by completing certain minimum data elements. Both mandatory and voluntary reporters will see and be provided the opportunity to submit additional optional information. A Reporter can answer one, a few, or all of the optional questions. Reporters are

strongly encouraged to submit as much optional information as possible. This will help to ensure the FDA has sufficient information to identify products and problems, and enhance their ability to address these problems.

The optional questions serve a purpose for both the Reporter and the FDA. The Reporter may believe that additional information is needed for FDA to fully understand the event/problem and the optional questions provide an opportunity to provide such information. For the FDA, the optional questions may aid in fully understanding the problem and may eliminate the need for extensive follow up with the Reporter. Because Reporters can choose to answer none, one, a few, or all of the optional questions, we estimated the maximum time needed to submit a safety report online for both voluntary and mandatory reporters in the hours per response column in table 2 of this document.

The agency's estimate of the number of respondents and the total annual responses in table 2 is based on the mandatory and voluntary reports submitted to the centers and ORA. The estimated total annual responses in table 2 are based on initial reports. Follow-up reports, if any, are not counted as new reports. FDA estimates that it will receive 37,565 voluntary reports [23,033 (CBER/CDER) + 4,369 (CDRH) + 5,000 (CFSAN) + 163 (CVM) + 5,000 (ORA) = 37,565]. FDA estimates that it will receive 642,016 mandatory reports [459,121 (CBER/CDER) + 146,274 (CDRH) + 856 (CFSAN) + 35,765 (CVM) + 0 (ORA) = 642,016].

FDA received 23,033 voluntary reports to CBER/CDER during 2007. Based on this experience, FDA estimates that CBER and CDER, collectively, will receive 23,033 voluntary reports annually from 23,033 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 13,820 hours (23,033 reports x 0.6 hours = 13,819.8 hours).

FDA received 459,121 mandatory reports to CBER/CDER during 2007. Based on this experience, FDA estimates that CBER and CDER, collectively, will receive 459,121 mandatory reports annually from 600 users of the electronic reporting system. FDA estimates the maximum reporting burden for a mandatory report to be 1

hour, for a total burden of 459,121 hours ((459,121 reports x 1 hour) or a minimum burden of 312,202 hours with ((459,121 reports x 80% x 0.60 hour) + (459,121 reports x 20% x 1 hour) = 312,202.28 hours).

FDA received 4,369 voluntary reports to CDRH during 2007. Based on this experience, FDA estimates that CDRH will receive 4,369 voluntary reports annually from 4,369 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 2,621 hours (4,369 reports x 0.6 hours = 2,621.4 hours).

FDA received 146,274 mandatory reports to CDRH during 2007. Based on this experience, FDA estimates that CDRH will receive 146,274 mandatory reports annually from 1,665 users of the electronic reporting system (a group comprised of facilities, importers, and manufacturers). FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 146,274 hours (146,274 reports x 1 hour = 146,274 hours) or a minimum burden of 99,466 hours with ((146,274 reports x 80% x 0.60 hour) + (146,274 reports x 20% x 1 hour) = 99,466.32 hours). FDA received 5,000 voluntary reports to CFSAN during 2007. Based on this experience, FDA estimates that CFSAN will receive 5,000 voluntary reports annually from 5,000 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 3,000 hours (5,000 reports x 0.6 hours = 3,000 hours).

FDA received 214 mandatory dietary supplement reports to CFSAN from January 1, 2008, to April 15, 2008. Based on this experience, FDA estimates that CFSAN will receive 856 mandatory reports annually from 150 users of the electronic reporting system. FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 856 hours (856 reports x 1 hour = 856 hours) or a minimum burden of 582 hours with ((856 reports x 80% x 0.60 hour) + (856 reports x 20% x 1 hour) = 582.08 hours).

FDA received 163 voluntary reports to CVM during 2007. Based on this experience, FDA estimates that CVM will receive 163 voluntary reports annually from 163 users of the electronic reporting system. FDA estimates the reporting burden for a

voluntary report to be 0.6 hours for a total burden of 98 hours (163 reports x 0.6 hours = 97.8 hours).

FDA received 35,765 mandatory reports to CVM during 2007. Based on this experience, FDA estimates that CVM will receive 35,765 mandatory reports annually from 808 users of the electronic reporting system. FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 35,765 hours (35,765 reports x 1 hour = 35,765 hours) or a minimum burden of 24,320 hours with ((35,765 reports x 80% x 0.60 hour) + (35,765 reports x 20% x 1 hour) = 24,320.20 hours).

FDA received 5,000 voluntary reports to ORA during 2007. Based on this experience, FDA estimates that ORA will receive 5,000 voluntary reports annually from 5,000 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 3,000 hours (5,000 reports x 0.6 hours = 3,000 hours). ORA does not receive mandatory reports.

FDAAA, Section 1005, the Reportable Food Registry, established new electronic mandatory and voluntary reporting requirements for instances of "reportable" food, meaning an article of food (other than infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. FDA received 625 voluntary food complaints leading to adverse events from January 1, 2008, to June 30, 2008, and there were 206 and 182 Class 1 Recalls for human food in Fiscal Years 2006 and 2007, respectively. Based on these experiences, FDA estimates that FDA could receive 200 to 1,200 "reportable" food reports annually from 200 to 1,200 mandatory and voluntary users of the electronic reporting system. FDA will utilize the upper-bound estimate of 1,200 for these calculations. FDA estimates the reporting burden for a mandatory "reportable" food report to be 0.6 hours, for a total burden of 720 hours (1,200 reports x 0.6 hours = 720 hours). FDA estimates the reporting burden for a voluntary "reportable" food report to be 0.6 hours, for a total burden of 720 hours (1,200 reports x 0.6 hours = 720 hours).

FDAAA, Section 1002, Early Warning Recall, mandated the FDA establish a system to receive voluntary pet food complaint reports and provide an Early Warning Recall system for the public. FDA received 270 voluntary pet food reports from January 1, 2008 to June 30, 2008. FDA received 10,740 and 99 pet food complaints in FY 2007 and 2006,

respectively. Based on these experiences, FDA estimates that FDA could receive 540 voluntary pet food reports annually from 540 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary "Early Warning Recall" report to be 0.6 hours, for a total burden of 324 hours (540 reports x 0.6 hours = 324 hours).

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: October 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-25211 Filed 10-22-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0544]

Agency Information Collection Activities; Proposed Collection; Comment Request; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the record retention requirement of the soy protein/coronary heart disease health claim.

DATES: Submit written or electronic comments on the collection of information by December 22, 2008.

ADDRESSES: Submit electronic comments on the collection of information to <http://>

www.regulations.gov. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim—21 CFR 101.82(c)(2)(ii)(B) (OMB Control Number 0910-0428)—Extension

Section 403(r)(3)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)(i)) provides for the use of food label statements characterizing a

relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health related condition only where that statement meets the requirements of the regulations promulgated by the Secretary of Health and Human Services to authorize the use of such a health claim. Section 101.82 (21 CFR 101.82) of FDA's regulations authorizes a health claim for food labels about soy protein and the risk of coronary heart disease. To bear the soy protein/coronary heart disease health claim, foods must contain at least 6.25 grams of soy protein per reference amount customarily

consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. However, at the present time there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the requirement that the food contain the qualifying amount of soy protein. Thus, FDA requires manufacturers to have and keep records to substantiate

the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request. The information collected includes nutrient databases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Part	No. of Record-keepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon the agency's experience with the use of health claims, FDA estimates that only about 25 firms would be likely to market products bearing a soy protein/coronary heart disease health claim and that only, perhaps, one of each firm's products might contain nonsoy sources of protein along with soy protein. The records required to be retained by § 101.82(c)(2)(ii)(B) are the records, e.g., the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is that involved in assembling and providing the records to appropriate regulatory officials for review or copying.

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: October 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-25336 Filed 10-22-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2005-N-0464]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 24, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0045. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing; Availability; Registration of Producers at Drugs and Listing of Drugs in Commercial Distribution—(OMB Control Number 0910-0045—Amendment)

Description of Respondents: Respondents to this collection of information are foreign and domestic owners and operators of establishments that engage in the manufacture, preparation, propagation, compounding, or processing (which includes, among other things, repackaging and relabeling) of a drug or drugs¹ and that are not exempt under section 510(g) of the Federal Food, Drug, and Cosmetic Act or subpart B of 21 CFR part 207 (part 207) (registrants).

A. Reporting Burden

The draft guidance describes how to electronically create and submit Structured Product Labeling (SPL) files using defined terminology for establishment registration and drug

¹ Means both human, including biological products, and animal drugs.

listing information (including labeling). Most information is already required to be submitted under section 510 of the act, section 351 of the Public Health Service Act, and part 207.

Drug establishment registration and drug listing information and updates to such information, required under part 207, and certain additional recommended information are currently submitted in paper form using Form FDA 2656 (Registration of Drug Establishment/Labeler Code Assignment), Form FDA 2657 (Drug Product Listing), and Form FDA 2658 (Registered Establishments Report of Private Label Distributors) (collectively referred to as FDA Forms; 72 FR 67733, November 30, 2007).

In addition to the information collected by the FDA Forms (72 FR 67733, November 30, 2007), the draft guidance addresses electronic submission of other required information as follows:

- For registered foreign drug establishments, the name, address, and telephone number of its U.S. agent (§ 207.40(c));
- The name of each importer that is known to the establishment (the U.S. company or individual in the United States that is an owner, consignee, or recipient of the foreign establishment's drug that is imported into the United States. An importer does not include the consumer or patient who ultimately purchases, receives, or is administered the drug, unless the foreign establishment ships the drug directly to the consumer or the patient) (section 510(i)(1)(A) of the act); and
- The name of each person who imports or offers for import (the name of each agent, broker, or other entity, other than a carrier, that the foreign drug establishment uses to facilitate the import of their drug into the United States) (section 510(i)(1)(A) of the act).

FDA also is recommending the voluntary submission of the following additional information, when applicable:

- To facilitate correspondence between foreign establishments and FDA, the e-mail address for the U.S. agent, and the telephone number(s) and e-mail address for the importer and person who imports or offers for import their drug;
- In providing the labeling as specified under § 207.25, for manufacturers with a Web site for voluntary reporting of adverse drug reactions, the manufacturer's telephone number and URL address that appear on the label under 21 CFR 201.57(a)(11);

- A site-specific D-U-N-S® Number² for each entity (e.g., the registrant, establishments, U.S. agent, importer);
- The National Drug Code product code for the source drug that is repacked or relabeled;

- A reference drug if used as a basis for the strength of the listed drug;
- Distinctive characteristics of certain listed drugs, i.e., the flavor, the color, and image of the actual solid dosage form; and
- Registrants may indicate that they view as confidential the registrant's business relationship with an establishment, or an inactive ingredient.

In addition to the collection of information, there is additional burden for the following activities:

- Preparing a standard operating procedure (SOP) for the electronic submission of drug establishment registration and drug listing information;
- Creating the SPL file, including accessing and reviewing the technical specifications and instructional documents provided by FDA (accessible at <http://www.fda.gov/oc/datacouncil/spl.html>);
- Reviewing and selecting appropriate terms and codes used to create the SPL file (accessible at <http://www.fda.gov/oc/datacouncil/spl.html>);
- Obtaining the digital certificate used with FDA's electronic submission gateway (ESG) and uploading the SPL file for submission (accessible at <http://www.fda.gov/esg/default.htm>); and
- Requests for waivers from the electronic submission process as described in the draft guidance.

B. Burden Estimates

Reporting Burden—The estimates for the number of respondents, annual frequency per response, and total annual responses indicated in table 1 of this document are based on our current estimates of the number of registrants and the number of submissions using the FDA Forms (OMB Control No. 0910-0045). FDA estimates that it would take an additional 2 hours per response (in addition to the estimated 2.5 hours per response for registering, labeler code requests, listing, and providing updates to the information approved under OMB Control No. 0910-0045) for the collection of information not currently submitted using the FDA Forms, and to create and upload the SPL file. FDA

² D&B® D-U-N-S® Number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 100 million businesses worldwide. Submitting the site-specific D-U-N-S® Number for an entity would provide by reference to the number certain business information for that entity, e.g., address, parentage.

anticipates that the hours per response will decrease over time due to the flexibility of submitting information for registering multiple establishments or listing multiple drugs in one SPL file instead of submitting individual FDA Forms, and increasing familiarity with the use of the standards and terminology for creating the SPL file.

In certain cases, if it is unreasonable to expect a person to submit registration and listing information electronically, FDA may grant a waiver from the electronic format requirement. Because registrants will only need a computer and access to the Internet, FDA envisions few instances in which electronic submission of registration and listing information will not be reasonable for the person requesting the waiver and, thus, is estimating that FDA would grant one waiver annually. We estimate that a one-time burden for requesting a waiver would be an hour of time for a mid-level manager to draft, approve, and mail a letter.

Recordkeeping Burden—In table 2 of this document, FDA estimates that 3,295 (39 + 3,256) respondents would expend a one-time burden of approximately 40 hours in preparing, reviewing, and approving an SOP for creating and uploading the SPL file; and an estimated 1 hour annually to maintain the SOP as needed.

In the **Federal Register** of July 11, 2008 (73 FR 39964), FDA published a draft notice of availability requesting public comment on the information collection provisions. Nineteen comments were received of which 4 remarked on the information collection.

(Comment 1) On the topic whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have a practical utility, one comment agreed that the proposed collection of information is necessary for us to perform its functions and is consistent with the provisions of the Food and Drug Administration Amendments Act of 2007 (Public Law 110-85). The comment continued to say that the information is also necessary to support the transition from paper format to electronic format, and that the additional information requested by us is logical and reasonable and is not an undue burden.

(Response) We appreciate the support and concurrence of the comment.

(Comment 2) On the topic whether the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, one comment stated that we underestimated the effort to prepare,

review, approve, implement and maintain internal SOPs for electronic submission of drug establishment registration and drug listing information because of the following reason.

Particularly for most large companies, drug establishment registration and drug listing information (currently submitted in paper format under 21 CFR 207.22) and content of labeling (currently submitted in electronic format under 21 CFR 314.50(l)(1)(i)) are handled by completely different functional experts and/or departments in the companies. To coordinate these processes, additional time is needed to define new procedures and interactions that cross functional departments and possibly international groups. Therefore, large companies will expend more than 40 hours to prepare, review, approve, implement and maintain SOPs.

Another comment asserts that the hours per response in table 1 of this document are underestimated if the estimate accounts for the time required to become familiar with the SPL standard.

(Response) In estimating hours per record in table 2 of this document, we considered the various sizes of entities affected and proposed an average number of hours per activity. For example, the estimated 40 hours per record are based on smaller entities requiring approximately 20 hours per record and larger entities requiring

approximately 60 hours per record. Therefore, because the comment did not provide a revised estimate, we are maintaining an estimate of 40 hours per record, which is consistent with preparing SOPs for paper format submissions and also includes coordination efforts.

Regarding the comment on underestimating the hours per response in table 1, the software designed to create the SPL files, the step-by-step instructions in the technical guides, and our technical assistance e-mail address are provided by us for the purpose of minimizing the need to learn the SPL standard before submitting information electronically.

(Comment 3) On the topic of ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology, one comment encouraged us to continue the availability of Xforms at no cost for industry to use as a software tool for the creation of SPL. The comment also requested that we continue this practice as technology evolves and provide support for this tool.

(Response) We appreciate the encouragement of the comment and will consider the request to continue the practice and provide support as technology evolves.

(Comment 4) Two comments did not agree with our statement that there are no capital or operating and maintenance costs associated with the collection of information. The comments explained that some companies may choose alternative tools to the Xform software or work with external conversion providers, which may involve the purchase and maintenance of software plus the use of internal information technology personnel for installation, configuration, and maintenance. These comments further stated that these costs are significant and need to be considered in the overall cost for industry to comply with the electronic submission requirement.

(Response) As the comments stated, companies may choose to use alternative tools or work with external conversion providers. We do not disagree. However, we have made every effort to eliminate costs to industry to comply with the statutory requirement to electronically submit drug establishment registration and drug listing information.

We also received comments that were specifically related to the technical documents referenced in the draft guidance. Although these comments are not directly related to the draft guidance document that contains the information collection, we will consider the comments when reviewing the technical documents for revision.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
New registrations, including new labeler code requests	39	14.72	574	2	1,148
Annual updates of registration information	3,256	2.99	9,735	2	19,470
New drug listings	1,567	6.57	10,295	2	20,590
New listings for private label distributors	146	10.06	1,469	2	2,938
June and December updates of all drug listing information	1,677	11.21	18,799	2	37,598
Waiver requests	1	1	1	1	1
Total					81,745

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

Activity	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
One-time preparation of SOP	3,295	1	3,295	40	131,800
SOP maintenance	3,295	1	3,295	1	3,295

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹—Continued

Activity	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
Total					135,095

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

C. Costs Associated With Electronic Submission

There are no capital costs or operating and maintenance costs associated with the transition from paper to electronic submissions. To create an SPL file and submit it to FDA, a registrant would need the following tools: A computer, appropriate software, access to the Internet, knowledge of terminology and standards, and access to FDA's ESG.

Registrants (and most individuals) have computers and Internet access available for their use. If a business does not have an available computer or access to the Internet, free use of computers and Internet are usually available at public facilities, e.g., a community library; or they may request a waiver from submitting the information electronically.

Software is necessary to create a "document." The SPL file or "document" may be created internally by a business with experience with SPL or a business may use a user-friendly software (XForms)³ available at no cost for industry use. In addition to the software, FDA also provides technical assistance, and other resources, terminology, and data standards regarding SPL files.⁴

Once the SPL file is created, the registrant would upload the file through the ESG. A digital certificate is needed to use the ESG. The digital certificate binds together the owner's name and a pair of electronic keys (a public key and a private key) that can be used to encrypt and sign documents. However, a small fee of up to \$20.00 is charged for the digital certificate and the registrant may need to renew the certificate not less than annually. FDA is not calculating this small fee as cost of doing business because it is less than or equal to the biannual courier costs the registrant incurs for paper submissions.

Dated: October 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-25338 Filed 10-22-08; 8:45 am]

BILLING CODE 4160-01-S

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.

Development of Mutations Useful for Attenuating Dengue Viruses and Chimeric Dengue Viruses

Description of Technology: Although flaviviruses cause a great deal of human suffering and economic loss, there is a shortage of effective vaccines. This invention relates to dengue virus mutations that may contribute to the development of improved dengue vaccines. Site directed and random mutagenesis techniques were used to introduce mutations into the dengue virus genome and to assemble a collection of useful mutations for incorporation in recombinant live

attenuated dengue virus vaccines. The resulting mutant viruses were screened for several valuable phenotypes, including temperature sensitivity in Vero cells or human liver cells, host cell restriction in mosquito cells or human liver cells, host cell adaptation for improved replication in Vero cells, and attenuation in mice or in mosquitoes. The genetic basis for each observed phenotype was determined by direct sequence analysis of the genome of the mutant virus. Mutations identified through these sequencing efforts have been further evaluated by re-introduction of the identified mutations, singly, or in combination, into recombinant dengue virus and characterization of the resulting recombinant virus for phenotypes. In this manner, a menu of attenuating and growth promoting mutations was developed that is useful in fine-tuning the attenuation and growth characteristics of dengue virus vaccine candidates. The mutations promoting growth in Vero cells have usefulness for the production of live or inactivated dengue virus vaccines.

Inventors: Stephen S. Whitehead, Brian R. Murphy, Kathryn A. Hanley, Joseph E. Blaney (NIAID).

Patent Status: U.S. Patent No. 7,226,602 issued 05 Jun 2007 (HHS Reference No. E-120-2001/0-US-04); U.S. Patent Application No. 11/446,050 filed 02 Jun 2006 (HHS Reference No. E-120-2001/0-US-10).

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these vaccines. Please contact Dr. Brian Murphy at 301-594-1616 or bm25f@nih.gov for more information.

Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in the 3'-UTR of Dengue Types 1, 2, 3, and 4

Description of Technology: The invention relates to a dengue virus

³ See <http://www.fda.gov/oc/datacouncil/xforms.html>.

⁴ See <http://www.fda.gov/oc/datacouncil/spl.html>.

tetravalent vaccine containing a common 30-nucleotide deletion (Delta30) in the 3'-untranslated region (UTR) of the genome of dengue virus serotypes 1, 2, 3, and 4. The previously identified Delta30 attenuating mutation, created in dengue virus type 4 (DEN4) by the removal of 30 nucleotides from the 3'-UTR, is also capable of attenuating a wild-type strain of dengue virus type 1 (DEN1). Removal of 30 nucleotides from the DEN1 3'-UTR in a highly conserved region homologous to the DEN4 region encompassing the Delta30 mutation yielded a recombinant virus attenuated in rhesus monkeys to a level similar to recombinant virus DEN4Delta30. This established the transportability of the Delta30 mutation and its attenuation phenotype to a dengue virus type other than DEN4. The effective transferability of the Delta30 mutation establishes the usefulness of the Delta30 mutation to attenuate and improve the safety of commercializable dengue virus vaccines of any serotype.

A tetravalent dengue virus vaccine containing dengue virus types 1, 2, 3, and 4 each attenuated by the Delta30 mutation is being developed. The presence of the Delta30 attenuating mutation in each virus component precludes the reversion to a wild-type virus by intertypic recombination. In addition, because of the inherent genetic stability of deletion mutations, the Delta30 mutation represents an excellent alternative for use as a common mutation shared among each component of a tetravalent vaccine.

Inventors: Stephen S. Whitehead (NIAID), Brian R. Murphy (NIAID), Lewis Markoff (FDA), Barry Falgout (FDA), Kathryn A. Hanley (NIAID), Joseph E. Blaney (NIAID).

Patent Status: U.S. Patent Application No. 10/970,640 filed 21 Oct 2004, claiming priority to 03 May 2002 (HHS Reference No. E-089-2002/1-US-02)

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these vaccines. Please contact Dr. Brian Murphy at 301-594-1616 or bm25f@nih.gov for more information.

Live Attenuated Vaccine to Prevent Disease Caused by West Nile Virus

Description of Technology: WNV has recently emerged in the U.S. and is considered a significant emerging

disease that has embedded itself over a considerable region of the U.S. WNV infections have been recorded in humans as well as in different animals. To date, WNV has killed 294 people in the U.S. and caused severe disease in more than 4222 others. This project is part of NIAID's comprehensive emerging infectious disease program, which supports research on bacterial, viral, and other types of disease-causing microbes.

The methods and compositions of this invention provide a means for prevention of WNV infection by immunization with attenuated, immunogenic viral vaccines against WNV. The invention involves a chimeric virus form consisting of parts of WNV and Dengue virus. Construction of the hybrids and their properties are described in detail in AG Pletnev *et al.*, PNAS 2002; 99(5): 3036-3041.

The WNV chimeric vaccine does not target the central nervous system, which would be the case in an infection with wild type WNV. The vaccine stimulates strong anti-WNV immune responses, even following a single dose of the vaccine. When injected into mice, the vaccine protected all of the immunized animals from subsequent exposure to the New York WNV strain. The vaccine was also effective in primates.

The WNV vaccine may be used to protect the human population, particularly the elderly people, and domestic animals from WNV infection in the affected regions of the U.S. as well as worldwide.

Inventors: Alexander G. Pletnev *et al.* (NIAID).

Patent Status: U.S. Patent Application No. 10/871,775 filed 18 Jun 2004 (HHS Reference No. E-357-2001/1-US-02).

Licensing Status: Available for exclusive or non-exclusive licensing for developing a vaccine against WNV for humans or veterinary use in accordance with 35 U.S.C. 207 and 37 CFR Part 404.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, and commercialize this technology. Please contact Percy Pan at 301-451-3523 or panp@niaid.nih.gov for more information.

Development of Dengue Virus Type 3 Vaccine Candidates Containing Either (1) Nucleotide Deletions in the 3'-UTR of the Genome Consisting of More Than 30 Contiguous Nucleotides in One or Multiple Regions, or (2) a 3'-UTR Derived From DEN4 and Containing the A30 Nucleotide Deletion

Description of Technology: The disease burden associated with dengue virus infection has increased over the past several decades in the tropical and semi-tropical regions of the world, where over 2 billion people live at risk of dengue infection. Annually, there are an estimated fifty (50) to one hundred (100) million cases of dengue fever, making development of an effective vaccine a priority. In addition, there is a need for a "travelers vaccine" to protect those visiting dengue virus endemic areas, similar in scope to other currently available "travelers vaccines", such as hepatitis A vaccine.

The previously identified Δ 30 attenuating mutation, created in each dengue virus serotype by the removal of 30 homologous nucleotides from the 3'-UTR, is capable of attenuating wild-type strains of dengue virus type 1 (DEN1), type 4 (DEN4) and to a limited extent type 2 (DEN2). These DEN1Delta30 and DEN4Delta30 viruses have been shown to be both safe and immunogenic in humans. However, the Delta30 mutation failed to have an attenuating effect on dengue virus type 3 (DEN3). To generate DEN3 vaccine candidates with a clearly attenuated phenotype, viruses were produced containing 3'-UTR deletions consisting of extensions of the original Delta30 mutation or additional mutations which remove stem-loop structures similar to those removed by Delta30. In addition, the entire 3'-UTR of DEN3 was replaced with the 3'-UTR derived from DEN4 and containing the Delta30 mutation. Studies in monkeys demonstrated that these newly developed viruses are highly attenuated, yet sufficiently immunogenic to warrant their further development for use as live attenuated vaccine candidates. Such viruses are anticipated to become the DEN3 component of a tetravalent vaccine formulation designed to immunize against all four dengue virus serotypes.

Application: Immunization against all four serotypes of Dengue Virus.

Developmental Status: Vaccine candidates have been synthesized and preclinical studies have been performed. The vaccine candidates of this invention are slated to enter Phase I clinical trials in the next year.

Inventors: Stephen S. Whitehead, Joseph E. Blaney, Brian R. Murphy (NIAID).

Patent Status: PCT Application No. PCT/US2007/076004 filed 15 Aug 2007, claiming priority to 15 Aug 2006 (HHS Reference No. E-139-2006/0-PCT-02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these vaccines. Please contact Dr. Brian Murphy at 301-594-1616 or bm25f@nih.gov for more information.

Live Attenuated Virus Vaccines for La Crosse Virus and Other Bunyaviridae

Description of Technology: La Crosse virus (LACV), family *Bunyaviridae*, is a mosquito-borne pathogen endemic in the United States. LACV infection results in 70-130 clinical cases a year and is the major cause of pediatric arboviral encephalitis in North America. LACV was first identified as human pathogen in 1960 after its isolation from a 4 year-old girl from Minnesota who suffered meningoencephalitis and later died in La Crosse, Wisconsin. The majority of LACV infections are mild and never reported, however serologic studies estimate annual infection rates of 10-30/100,000 in endemic areas. LACV is a member of the California serogroup of viruses in the genus *Orthobunyavirus*. The serogroup contains members found on five continents that include human pathogens such as La Crosse, Snowshoe hare, and Jamestown Canyon viruses in North America; Guaroa virus in North and South America; Inkoo and Tahyna viruses in Europe; and Lumbo virus in Africa. Children who recover from severe La Crosse encephalitis may have significantly lower IQ scores than expected and a high prevalence (60% of those tested) of attention-deficit-hyperactivity disorder. Seizure disorders are also common in survivors. LACV can also cause encephalitis in immunosuppressed adults. Projected lifelong economic costs associated with neurologic sequelae range from \$48,775-3,090,398 per case. At present, a vaccine or FDA approved antiviral therapy is not available.

This application principally claims live attenuated LACV vaccine compositions, but also includes subunit

vaccine compositions including California encephalitis virus (CEV) serogroup immunogens, attenuated and inactivated CEV serogroup and chimeric *Bunyaviridae*. Also claimed are methods of treating or preventing CEV serogroup infection in a mammalian host, methods of producing a subunit vaccine composition, isolated polynucleotides comprising a nucleotide sequence encoding a CEV serogroup immunogen, methods for detecting LACV infection in a biological sample and infectious chimeric *Bunyaviridae*.

Application: Immunization against *Bunyaviridae*.

Developmental Status: Live attenuated vaccine candidates are currently being developed and preclinical studies in mice and monkeys are in progress. Suitable vaccine candidates will then be evaluated in clinical studies.

Inventors: Stephen S. Whitehead, Richard S. Bennett, Brian R. Murphy (NIAID)

Publication: RS Bennett et al. Genome sequence analysis of La Crosse virus and in vitro and in vivo phenotypes. *Virology* 2007 May 8;4:41.

Patent Status: PCT Application No. PCT/US2008/056099 filed 06 Mar 2008, claiming priority to 29 Mar 2007 (HHS Reference No. E-158-2007/3-PCT-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize live attenuated virus vaccine candidates for La Crosse virus and other *Bunyaviridae*. Please contact Dr. Whitehead at 301-496-7692 for more information.

Development of Antigenic Chimeric St. Louis Encephalitis Virus/Dengue Virus Type Four Recombinant Viruses (SLEV/DEN4) as Vaccine Candidates for the Prevention of Disease Caused by SLEV

Description of Technology: St. Louis Encephalitis Virus (SLEV) is a mosquito-borne flavivirus that is endemic in the Americas and causes sporadic outbreaks of disease in humans. SLEV is a member of the Japanese encephalitis virus serocomplex and is closely related to West Nile Virus (WNV). St. Louis encephalitis is found throughout North, Central, and South America, and the Caribbean, but is a major public health problem mainly in

the United States. Prior to the outbreak of West Nile virus in 1999, St. Louis encephalitis was the most common human disease caused by mosquitoes in the United States. Since 1964, there have been about 4,440 confirmed cases of St. Louis encephalitis, with an average of 130 cases per year. Up to 3,000 cases have been reported during epidemics in some years. Many more infections occur without symptoms and go undiagnosed. At present, a vaccine or FDA approved antiviral therapy is not available.

The inventors have previously developed a WNV/Dengue4Delta30 antigenic chimeric virus as a live attenuated virus vaccine candidate that contains the WNV premembrane and envelope (prM and E) proteins on a dengue virus type 4 (DEN4) genetic background with a thirty nucleotide deletion (Delta30) in the DEN4 3'-UTR. Using a similar strategy, the inventors have generated an antigenic chimeric virus, SLE/DEN4Delta30. Preclinical testing results indicate that chimerization of SLE with DEN4Delta30 decreased neuroinvasiveness in mice, did not affect neurovirulence in mice, and appeared to overattenuate the virus for non-human primates. Modifications of the SLE/DEN4Delta30 vaccine candidate are underway to improve its immunogenicity.

This application claims live attenuated chimeric SLE/DEN4Delta30 vaccine compositions and bivalent WNV/SLE/DEN4Delta30 vaccine compositions. Also claimed are methods of treating or preventing SLEV infection in a mammalian host, methods of producing a subunit vaccine composition, isolated polynucleotides comprising a nucleotide sequence encoding a SLEV immunogen, methods for detecting SLEV infection in a biological sample and infectious chimeric SLEV.

Application: Immunization against SLEV or SLEV and WNV.

Development Status: Live attenuated vaccine candidates are currently being developed and preclinical studies in mice and monkeys are in progress. Suitable vaccine candidates will then be evaluated in clinical studies.

Inventors: Stephen S. Whitehead, Joseph Blaney, Alexander Pletnev, Brian R. Murphy (NIAID).

Patent Status: PCT Application No. PCT/US2008/066445 filed 10 Jun 2008, claiming priority to 14 Jun 2007 (HHS Reference No. E-240-2007/0-PCT-02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize live attenuated virus vaccine candidates for St. Louis encephalitis virus. Please contact Dr. Whitehead at 301-496-7692 for more information.

Generation of Wild-Type Dengue Viruses for Use in Rhesus Monkey Infection Studies

Description of Technology: Dengue virus is a positive-sense RNA virus belonging to the *Flavivirus* genus of the family *Flaviviridae*. Dengue virus is widely distributed throughout the tropical and semitropical regions of the world and is transmitted to humans by mosquito vectors. Dengue virus is a leading cause of hospitalization and death in children in at least eight tropical Asian countries. There are four serotypes of dengue virus (DEN-1, DEN-2, DEN-3, and DEN-4) that annually cause an estimated 50–100 million cases of dengue fever and 500,000 cases of the more severe form of dengue virus infection known as dengue hemorrhagic fever/dengue shock syndrome (DHF/DSS). This latter disease is seen predominately in children and adults experiencing a second dengue virus infection with a serotype different than that of their first dengue virus infection and in primary infection of infants who still have circulating dengue-specific maternal antibody. A vaccine is needed to lessen the disease burden caused by dengue virus, but none is licensed.

Because of the association of more severe disease with secondary dengue virus infection, a successful vaccine must induce immunity to all four serotypes. Immunity is primarily mediated by neutralizing antibody directed against the envelope (E) glycoprotein, a virion structural protein. Infection with one serotype induces long-lived homotypic immunity and a short-lived heterotypic immunity. Therefore, the goal of immunization is to induce a long-lived neutralizing antibody response against DEN-1, DEN-2, DEN-3, and DEN-4, which can best be achieved economically using live attenuated virus vaccines. This is a reasonable goal since a live attenuated vaccine has already been developed for the related yellow fever virus, another mosquito-borne flavivirus present in tropical and semitropical regions of the world.

The evaluation of live attenuated dengue vaccine candidates in rhesus monkeys requires wild type control viruses for each of the four dengue serotypes. These control viruses are used for comparison to the attenuated strains and post-vaccination challenge to assess vaccine efficacy. As such, these viruses need to be well characterized and sufficiently pure to ensure that they will replicate to consistent levels in rhesus monkeys. Characterization generally includes sequence analysis, titration, and evaluation in monkeys. The following viruses have been characterized: (1) DEN1 WP (2) DEN1 Puerto Rico/94 (3) DEN2 NGC prototype (4) DEN2 Tonga/74 (5) DEN3 Sleman/78 and (6) DEN4 Dominica/81.

Application: Dengue/flavivirus vaccine studies, dengue/flavivirus diagnostics, dengue/flavivirus research tools.

Development Status: Materials are available for transfer.

Inventors: Stephen S. Whitehead and Joseph E. Blaney, Jr. (NIAID).

Publications:

1. AP Durbin, RA Karron, W Sun, DW Vaughn, MJ Reynolds, JR Perreault, B Thumar, R Men, C-J Lai, WR Elkins, RM Chanock, BR Murphy, SS Whitehead. A live attenuated dengue virus type 4 vaccine candidate with a 30 nucleotide deletion in the 3' untranslated region is highly attenuated and immunogenic in humans. *Am J Trop Med Hyg.* 2001 Nov; 65(5): 405–413.

2. SS Whitehead, B Falgout, KA Hanley, JE Blaney Jr., L Markoff, BR Murphy. A live, attenuated dengue virus type 1 vaccine candidate with a 30-nucleotide deletion in the 3' untranslated region is highly attenuated and immunogenic in monkeys. *J Virol.* 2003 Jan; 77(2): 1653–1657.

3. SS Whitehead, KA Hanley, JE Blaney Jr., LE Gilmore, WR Elkins, BR Murphy. Substitution of the structural genes of dengue virus type 4 with those of type 2 results in chimeric vaccine candidates which are attenuated for mosquitoes, mice, and rhesus monkeys. *Vaccine* 2003 Oct 1; 21(27–30): 4307–4316.

4. JE Blaney Jr., CT Hanson, KA Hanley, BR Murphy, SS Whitehead. Vaccine candidates derived from a novel infectious cDNA clone of an American genotype dengue virus type 2. *BMC Infect Dis.* 2004 Oct 4; 4:39.

5. JE Blaney Jr., CT Hanson, CY Firestone, KA Hanley, BR Murphy, SS Whitehead. Genetically modified, live attenuated dengue virus type 3 vaccine candidates. *Am J Trop Med Hyg.* 2004 Dec; 71(6): 811–821.

6. JE Blaney Jr., JM Matro, BR Murphy, SS Whitehead. Recombinant, live-attenuated tetravalent dengue virus vaccine formulations induce a balanced, broad, and protective neutralizing antibody response against each of the four serotypes in rhesus monkeys. *J Virol.* 2005 May; 79(9): 5516–5528.

7. JE Blaney Jr., NS Sathe, CT Hanson, CY Firestone, BR Murphy, SS Whitehead. Vaccine candidates for dengue virus type 1 (DEN1) generated by replacement of the structural genes of rDEN4 and rDEN4Delta30 with those of DEN1. *Virol J.* 2007 Feb 28; 4:23.

Patent Status: HHS Reference No. E-042–2008/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for nonexclusive biological materials licensing only.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Monoclonal Antibodies Against Dengue and Other Viruses With Deletion in Fc Region

Description of Technology: The four dengue virus (DENV) serotypes (DENV-1 to DENV-4) are the most important arthropod-borne flaviviruses in terms of morbidity and geographic distribution. Up to 100 million DENV infections occur every year, mostly in tropical and subtropical areas where vector mosquitoes are abundant. Infection with any of the DENV serotypes may be asymptomatic or may lead to classic dengue fever or more severe dengue hemorrhagic fever (DHF) and dengue shock syndrome (DSS), which are increasingly common in the dengue endemic areas. Immunity to the same virus serotype (homotypic immunity) is life-long, whereas immunity to different serotypes (heterotypic immunity) lasts 2–3 months so that infection with a different serotype virus is possible. DHF/DSS often occurs in patients with second, heterotypic DENV infections or in infants with maternally transferred dengue immunity. Severe dengue is a major cause of hospitalization, and fatality rates vary from <1% to 5% in children.

Antibody-dependent enhancement (ADE) has been proposed as an underlying pathogenic mechanism of DHF/DSS. ADE occurs because preexisting subneutralizing antibodies and the infecting DENV form complexes that bind to Fc receptor-bearing cells, leading to increased virus uptake and replication. ADE has been repeatedly demonstrated in vitro using dengue immune sera or monoclonal antibodies and cells of monocytic and recently, B

lymphocytic lineages bearing Fc receptors. ADE of DENV-2 infection has also been demonstrated in monkeys infused with a human dengue immune serum.

We have identified chimpanzee-human chimeric IgG1 mAbs capable of neutralizing or binding to one or more DENV serotypes. Cross-reactive IgG 1A5 neutralizes DENV-1 and DENV-2 more efficiently than DENV-3 and DENV-4, and type-specific IgG 5H2 neutralizes DENV-4 at a high titer. Analysis of antigenic variants has localized the IgG 1A5 binding site to the conserved fusion peptide in E. Thus, IgG 1A5 shares many characteristics with the cross-reactive antibodies detected in flavivirus infections.

This application claims a variant of an antibody comprising a polypeptide in the Fc region, which binds an Fc gamma receptor (FcgammaR) with lower affinity than the parent antibody. The variant polypeptide comprises a deletion of nine amino acids at the N-terminus of the C_H2 domain in the Fc region. Introduction of the Fc variant abrogates the antibody-mediated dengue virus replication enhancing activity. This invention has important implications for the antibody-mediated prevention of dengue virus infection.

Application: Immunization against Dengue and/or flaviviruses.

Developmental Status: Antibody candidates have been synthesized and preclinical studies have been performed.

Inventors: Ana Goncalves, Robert Purcell, C.J. Lai (NIAID).

Publication: AP Goncalves *et al.* Monoclonal antibody-mediated enhancement of dengue virus infection in vitro and in vivo and strategies for prevention. Proc Natl Acad Sci USA. 2007 May 29; 104(22): 9422–9427.

Patent Status: PCT Application No. PCT/US2008/059313 filed 03 Apr 2008, claiming priority to 04 Apr 2007 (HHS Reference No. E-159-2007/3-PCT-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Monoclonal Antibodies That Bind or Neutralize Dengue Virus

Description of Technology: Among the arthropod-borne flaviviruses, the four dengue virus serotypes, dengue type 1 virus (DENV-1), dengue type 2 virus (DENV-2), dengue type 3 virus (DENV-3), and dengue type 4 virus (DENV-4) are most important in terms of human morbidity and geographic distribution. Dengue viruses cause dengue outbreaks and major epidemics in most tropical

and subtropical areas where *Aedes albopictus* and *Aedes aegypti* mosquitoes are abundant. Dengue infection produces fever, rash, and joint pain in humans. A more severe and life-threatening form of dengue, characterized by hemorrhagic fever and hemorrhagic shock, has occurred with increasing frequency in Southeast Asia and Central and South America, where all four dengue virus serotypes circulate. A safe and effective vaccine against dengue is currently not available. Passive immunization with monoclonal antibodies from non-human primates or humans represents a possible alternative to vaccines for prevention of illness caused by dengue virus.

The application claims monoclonal antibodies that bind or neutralize dengue type 1, 2, 3, and/or 4 viruses. The application also claims fragments of such antibodies retaining dengue virus-binding ability, fully human or humanized antibodies retaining dengue virus-binding ability, and pharmaceutical compositions including such antibodies. The application also claims isolated nucleic acids encoding the antibodies of the invention. Additionally, application claims prophylactic, therapeutic, and diagnostic methods employing the antibodies and nucleic acids of the invention.

Application: Prophylaxis against dengue serotypes 1, 2, 3 and 4.

Development Status: Antibodies have been synthesized and preclinical studies have been performed.

Inventors: Ching-Juh Lai and Robert Purcell (NIAID).

Publications: The antibodies are further described in:

1. R Men *et al.* Identification of chimpanzee Fab fragments by repertoire cloning and production of a full-length humanized immunoglobulin G1 antibody that is highly efficient for neutralization of dengue type 4 virus. J Virol. 2004 May; 78(9): 4665–4674.

2. AP Goncalves *et al.* Chimpanzee Fab fragments and a derived humanized immunoglobulin G1 antibody that efficiently cross-neutralize dengue type 1 and type 2 viruses. J Virol. 2004 Dec; 78(23): 12910–12918.

3. AP Goncalves *et al.* Epitope determinants of a chimpanzee Fab antibody that efficiently cross-neutralizes dengue type 1 and type 2 viruses map to inside and in close proximity to fusion loop of the dengue type 2 virus envelope glycoprotein. J Virol. 2004 Dec; 78(23): 12919–12928.

4. AP Goncalves *et al.* Monoclonal antibody-mediated enhancement of dengue virus infection in vitro and in

vivo and strategies for prevention. Proc Natl Acad Sci U.S.A. 2007 May 29; 104(22): 9422–9427.

Patent Status: U.S. Patent Application No. 10/582,006 filed 07 Jun 2006 (HHS Reference No. E-066-2003/5-US-02); Canadian Patent Application No. 2548808 filed 03 Dec 2004 (HHS Reference No. E-066-2003/5-CA-03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Ching-Juh Lai at 301-594-2422 for more information.

Dated: October 14, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8-25210 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

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.

Monoclonal Antibodies Against Orthopoxviruses

Description of Technology: Concerns that variola (smallpox) virus might be used as a biological weapon have led to the recommendation of widespread vaccination with vaccinia virus. While vaccination is generally safe and effective for prevention of smallpox, it is well documented that various adverse reactions in individuals have been caused by vaccination with existing licensed vaccines. Vaccinia immune globulin (VIG) prepared from vaccinated humans has historically been used to treat adverse reactions arising from vaccinia immunization. However, VIG lots may have different potencies and carry the potential to transmit other viral agents.

Chimpanzee Fabs against the B5 and A33 outer extracellular membrane proteins of vaccinia virus were isolated and converted into complete mAbs with human gamma1 heavy chain constant regions. The two mAbs displayed high binding affinities to B5 and A33. The mAbs inhibited the spread of vaccinia virus as well as variola virus (the causative agent of smallpox) *in vitro*, protected mice from subsequent intranasal challenge with virulent vaccinia virus, protected mice when administered 2 days after challenge, and provided significantly greater protection than that afforded by VIG.

Application: Prophylactics or therapeutics against orthopoxviruses.

Development Status: Preclinical studies have been performed.

Inventors: Zhaochun Chen, Robert Purcell, Suzanne Emerson, Patricia Earl, Bernard Moss (NIAID).

Publications:

1. Z Chen *et al.* Chimpanzee/human mAbs to vaccinia virus B5 protein neutralize vaccinia and smallpox viruses and protect mice against vaccinia virus. *Proc Natl Acad Sci USA*. 2006 Feb 7; 103(6): 1882–1887.

2. Z Chen *et al.* Characterization of chimpanzee/human monoclonal antibodies to vaccinia virus A33 glycoprotein and its variola virus homolog *in vitro* and in a vaccinia virus mouse protection model. *J Virol*. 2007 Sep; 81(17): 8989–8995.

Patent Status: U.S. Patent Application No. 12/142,594 filed 19 Jun 2008, claiming priority to 22 Dec 2005 (HHS Reference No. E-145-2004/3-US-02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and

Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Chimpanzee/human neutralizing monoclonal antibodies against orthopoxviruses. Please contact Dr. Robert Purcell at 301-496-5090 for more information.

Methods for Conjugation of Oligosaccharides or Polysaccharides to Protein Carriers Through Oxime Linkages via 3-Deoxy-D-Manno-Octulosonic Acid

Description of Technology: This technology comprises new methods for the conjugation of O-specific polysaccharides/oligosaccharides (O-SP/OS) derived from bacterial lipooligosaccharides/lipopolysaccharides (LOS/LPS), after their cleavage from Lipid A, to carrier proteins, to serve as potential vaccines. Conjugation is performed between the carbonyl group on the terminal reducing end of the saccharide and the aminoxy group of a bifunctional linker bound further to the protein.

The inventors have carried out the reaction under mild conditions and in a short time resulting in binding 3-deoxy-D-manno-octulosonic acid (KDO) on the saccharide to the protein. These conjugates preserve the external non-reducing end of the saccharide, are recognized by antisera, and induce immune responses in mice to both conjugate components (i.e., the OS and the associated carrier protein).

Application: Cost effective and efficient manufacturing of conjugate vaccines.

Inventors: Joanna Kubler-Kielb (NICHD), Vince Pozsgay (NICHD), Gil Ben-Menachem (NICHD), Rachel Schneerson (NICHD), *et al.*

Patent Status: PCT Application No. PCT/US2007/016373 filed 18 Jul 2007, which published as WO 2008/013735 on 31 Jan 2008; claiming priority to 21 Jul 2006 (HHS Reference No. E-183-2005/0-PCT-02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Dated: October 14, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8-25219 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

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.

Vaccine for Protection Against *Shigella sonnei* Disease

Description of Technology: Shigellosis is a global human health problem. Transmission usually occurs by contaminated food and water or through person-to-person contact. The bacterium is highly infectious by the oral route, and ingestion of as few as 10 organisms can cause an infection in volunteers. An estimated 200 million people worldwide suffer from shigellosis, with more than 650,000 associated deaths annually. A recent CDC estimate indicates the occurrence of over 440,000 annual shigellosis cases in the United States alone, approximately eighty percent (80%) of which are caused by *Shigella sonnei*. *Shigella sonnei* is more active in developed countries. *Shigella* infections are typically treated with a course of antibiotics. However, due to the emergence of multidrug resistant *Shigella* strains, a safe and effective vaccine is highly desirable. No vaccines against *Shigella* infection currently exist. Immunity to *Shigellae* is mediated largely by immune responses directed against the serotype specific O-polysaccharide. Claimed in the invention are compositions and methods for inducing an immunoprotective response against *S.*

sonnei. Specifically, an attenuated bacteria capable of expressing an *S. sonnei* antigen comprised of the *S. sonnei* form I O-polysaccharide expressed from the *S. sonnei* rfb/rfc gene cluster is claimed. The inventors have shown that the claimed vaccine compositions showed one hundred percent (100%) protection against parenteral challenge with virulent *S. sonnei* in mice.

Inventors: Dennis J. Kopecko (FDA), De-Qi Xu (NIDCR), John O. Cisar (NIDCR).

Patent Status: U.S. Patent Application No. 10/346,706 filed 15 Jan 2003, claiming priority to 16 Jan 2002 (HHS Reference No. E-210-2001/0-US-02)

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Methods for Preparing Complex Multivalent Immunogenic Conjugates

Description of Technology: Claimed in this application are novel methods for preparing complex multivalent immunogenic conjugates and conjugate vaccines. The multivalent conjugates and conjugate vaccines are synthesized by conjugating mixtures of more than one polysaccharide at a desired ratio of the component polysaccharides to at least one carrier protein using hydrazide chemistry. Because of the high efficiency of hydrazide chemistry in conjugation, the polysaccharides are effectively conjugated to the carrier protein(s) so that the resulting complex synthesized vaccine conjugate products, without requiring tedious and complicated purification procedures such as chromatography and/or ammonium sulfate precipitation, are efficacious in inducing antibodies in mice against each component polysaccharide. The methods claimed in this application simplify the preparation of multivalent conjugate vaccines by utilizing simultaneous conjugation reactions in a single reaction mixture or batch that includes at least two immunogenic-distinct polysaccharides. This single-batch simultaneous reaction eliminates the need for multiple parallel synthesis processes for each polysaccharide vaccine conjugate component as employed in conventional methods for making multivalent conjugate vaccines.

Application: Cost effective and efficient manufacturing of conjugate vaccines.

Inventors: Che-Hung Robert Lee (CBER/FDA).

Patent Status: PCT Application No. PCT/US2007/006627 filed 16 Mar 2007, which published as WO 2007/109129 on 27 Sep 2007 (HHS Reference No. E-

085-2005/0-PCT-02); U.S. Patent Application filed 15 Sep 2008 (HHS Reference No. E-085-2005/0-US-03).

Licensing Status: Available for exclusive or non-exclusive licensing. The technology is not available for licensing in the field of use of multivalent meningitis vaccines.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

A Method With Increased Yield for Production of Polysaccharide-Protein Conjugate Vaccines Using Hydrazide Chemistry

Description of Technology: Current methods for synthesis and manufacturing of polysaccharide-protein conjugate vaccines employ conjugation reactions with low efficiency (about twenty percent). This means that up to eighty percent of the added activated polysaccharide (PS) is lost. In addition, inclusion of a chromatographic process for purification of the conjugates from unconjugated PS is required.

The present invention utilizes the characteristic chemical property of hydrazide groups on one reactant to react with aldehyde groups or cyanate esters on the other reactant with an improved conjugate yield of at least sixty percent. With this conjugation efficiency the leftover unconjugated protein and polysaccharide would not need to be removed and thus the purification process of the conjugate product can be limited to diafiltration to remove the by-products of small molecules. The new conjugation reaction can be carried out within one or two days with reactant concentrations between 1 and 25 mg/mL at PS/protein ratios from 1:2 to 3:1, at temperatures between 4 and 40 degrees Centigrade, and in a pH range of 5.5 to 7.4, optimal conditions varying from PS to PS.

Application: Cost effective and efficient manufacturing of conjugate vaccines.

Inventors: Che-Hung Robert Lee and Carl E. Frasch (CBER/FDA).

Patent Status: U.S. Patent Application No. 10/566,899 filed 01 Feb 2006, claiming priority to 06 Aug 2003 (HHS Reference No. E-301-2003/0-US-10); U.S. Patent Application No. 10/566,898 filed 01 Feb 2006, claiming priority to 06 Aug 2003 (HHS Reference No. E-301-2003/1-US-02); International rights available.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

Dated: October 14, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8-25220 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

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.

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Gene Expression Profiling for Prognosis of a Non-Hodgkin Lymphoma

Description of Technology: Diffuse large B cell lymphoma (DLBCL) is a quickly progressing cancer of the white blood cells, which is the most common type of non-Hodgkin lymphoma. Most commonly, DLBCL is treated aggressively with combination chemotherapy referred to as R-CHOP. Fortunately, with this treatment more than half of these patients can be cured or show remission. However, other patients do not respond to treatment and succumb to the disease. Therefore, it would be helpful to predict which patients are likely not to respond to R-CHOP and would benefit from alternate treatments.

This invention provides gene microarrays and method of use claims for a survival predictor calculated for DLBCL patients undergoing combination therapy. By measuring the

gene expression of genes from cancer biopsies it is possible to identify patients that are unlikely to be cured by R-CHOP and could benefit from alternative treatments like anti-angiogenic drugs.

Applications: Diagnostic test for managing treatment of DLBCL patients; Design and analysis of clinical trials in DLBCL.

Market: About 16,000 new cases per year of DLBCL in U.S.; Affects mostly the middle-aged but it can afflict children.

Development Status: Clinical data is available.

Inventors: Louis M. Staudt (NCI).

Publication: A Rosenwald *et al.* The use of molecular profiling to predict survival after chemotherapy for diffuse large-B-cell lymphoma. *N Engl J Med.* 2002 Jun 20;346(25):1937–1947.

Patent Status: U.S. Provisional Application No. 61/059,678 filed 06 Jun 2008 (HHS Reference No. E-256-2008/0-US-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Sabarni Chatterjee, PhD; 301-435-5587; stansbej@mail.nih.gov.

A Simple Genetic Test for Kidney Disease

Description of Technology: This technology relates to methods of diagnosing a predisposition to diseases that cause chronic kidney disease (CKD) and end-stage kidney disease (ESKD). Variations in a gene, non-muscle myosin IIA (MYH9), are associated with 79% of the risk of focal segmental glomerulosclerosis (FSGS), the disease that causes ESKD, in African Americans with HIV, and 56% of African Americans as a whole. The variants are also associated with a 2–3 fold increased risk for end-stage kidney disease (ESKD) associated with hypertension. The variations are also present among European Americans, however they are less common.

A simple genetic screening test has been developed that identifies single nucleotide polymorphisms (SNP) and haplotypes in the non-muscle myosin gene MYH9. These variants confer genetic risk for the following kidney diseases: FSGS, collapsing glomerulopathy, HIV-associated nephropathy, hypertensive kidney disease, sickle cell nephropathy, lupus nephropathy, and possibly other kidney diseases.

Applications:

- Facilitate rigorous population (i.e. all individuals) screening for early kidney disease.

- Screen individuals with hypertension, to identify individuals who might benefit from more intensive therapy.

- Screen kidney donors for MYH9 risk alleles to improve renal allograft survival.

- Screen patients with sickle cell disease to identify those at increased risk for CKD.

- Screen patients with lupus nephritis to identify those at increased risk for CKD.

- Screen patients with HIV-1 infection to identify those at increased risk for kidney disease.

- Screen patient with other kidney diseases, including idiopathic and secondary kidney disease, where MYH9 mutations may alter the propensity to develop kidney disease or the rate of progressive renal function decline.

- Pharmaceutical agents might be developed that reverse the susceptibility phenotype, reducing propensity to CKD. These agents might alter non-muscle myosin IIA function or its interactions with critical molecular partners.

Market: An estimated 26 millions have CKD, with impaired glomerular filtration rate and approximately 100,000 individuals in the United States develop ESKD every year. The lifetime risk for ESKD is 7.5% of individuals of African American descent and 2.1% for individuals of European descent. Early identification of individuals with MYH9 variants who are at increased risk for CKD might substantially reduce morbidity and mortality in this population, as impaired kidney function is associated with death from cardiovascular disease even in patients who do not progress to ESKD.

Development Status: Early-stage development for clinical applications, including diagnostic testing and therapeutic intervention.

Inventors: Cheryl A. Winkler (SAIC/NCI), George W. Nelson (SAIC/NCI), Jeffrey B. Kopp (NIDDK), Michael W. Smith (SAIC/NCI), Randall C. Johnson (SAIC/NCI).

Publication: JB Kopp *et al.* MYH9 is a major-effect risk gene for focal segmental glomerulosclerosis. *Nat Genet.* 2008 Oct;40(10):1175–1184.

Patent Status: U.S. Provisional Application No. 61/024,863 filed 30 Jan 2008 (HHS Reference No. E-090-2008/0-US-01); U.S. Provisional Application No. 61/095,590 filed 09 Sep 2008 (HHS Reference No. E-090-2008/1-US-01).

Licensing Status: Available for non-exclusive and exclusive licensing.

Licensing Contact: Steve Standley, PhD; 301-435-4074; sstand@mail.nih.gov.

Collaborative Research Opportunity:

The National Cancer Institute, Laboratory of Genomic Diversity, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize genetic testing for MYH9. Please contact John D. Hewes, PhD at 301-435-3121 or hewesj@mail.nih.gov for more information.

Nanoparticles for Imaging and Treatment of Brain Tumors

Description of Technology: Malignant brain tumors, whether arising within the brain or invading the brain from other tissues, are difficult to treat. Conventional chemotherapy drugs do not reach therapeutic levels in brain tumor tissue, and do not remain in brain tumor tissue for long enough to enter brain tumor cells and kill them. As a consequence, these chemotherapy drugs are not effective at treating malignant brain tumors growing in patients, even though these drugs are effective at killing brain tumor cells growing in culture.

This invention claims that intravenously administered functionalized polyamidoamine (PAMAM) dendrimers of certain sizes can selectively cross the blood-brain barrier (BBB) of malignant brain tumors, and can accumulate over time within individual brain tumor cells. Gadolinium and fluorescent probe conjugated dendrimers with these properties can be used for simultaneous magnetic resonance and fluorescence imaging of brain tumor cells. Since these nanoparticles possess numerous additional surface functional groups, in addition to being useful for multi-modality imaging, functionalized dendrimers can also be useful for the simultaneous delivery of cytotoxic drugs and inhibitors of tumor cell metabolic or migratory pathways.

Advantages:

- Intravenously administered nanoparticles selectively cross the BBB of brain tumors and accumulate within brain tumor cells but not normal brain cells.

- Nanoparticles accumulate in and are retained in brain tumor tissue for long enough to result in the effective uptake of nanoparticles by individual brain tumor cells.

- Nanoparticle size can be adjusted to achieve the desired particle blood half-life.

- A wide variety of agents can be attached to the functional groups on the nanoparticle exterior.

Applications:

- Anatomic and metabolic imaging of brain and spinal cord tumors for diagnostic and therapeutic purposes.

- Intravenous treatment of brain and spinal cord tumors.

- Imaging of intravenous drug delivery to brain and spinal cord tumors.

- Potential to be used for imaging and treatment of other neurological disorders in which the BBB becomes porous.

Market: In 2008, it is estimated that malignant tumors of the brain and spinal cord will account for about 1.5% of all cancers and 2.3% of all expected cancer-related deaths.

Development Status: Early stage development; Pre-clinical data available.

Inventor: Hemant Sarin (CC).

Patent Status: U.S. Provisional Application No. 61/055,328 filed 22 May 2008 (HHS Reference No. E-063-2008/0-US-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Surekha Vathyam, PhD; 301-435-4076; vathyams@mail.nih.gov.

Induced Internalization of Surface Receptors

Description of Technology: Cell-surface receptors are responsible for the biological activities of many molecules. Specific ligands bind to them, causing the cell-surface receptors to internalize or bring the receptor and ligand inside the cell. A number of diseases, including cancer, metabolic disorders, and viral infections are known to require the expression of cell-surface receptors for critical pathogenetic steps. This has prompted significant research efforts towards the development of pharmaceutical agents that block the signals from cell-surface receptors. While this current research shows great promise, there is a strong need for new therapeutic strategies that utilize the mechanistic properties of cell-surface receptors.

This technology describes a strategy for artificially inducing the internalization of surface receptors, and thereby blocking the effects of the ligands associated with that receptor. This method employs bifunctional ligands that bind to both a scavenger receptor and a target receptor. As proof of concept, the inventors Drs. Narazaki and Tosato have shown that a ligand capable of binding to the scavenger receptor SREC-1 and the neuropilin-1 receptor NRP1 induces the internalization of NRP1 and inhibits NRP1 signaling. The inventors propose that this strategy can be used to inhibit

signaling from any target receptor if an appropriate bifunctional ligand is used. For example, the concept could be expanded to other receptors, such as HDL and LDL receptors. Likewise the bifunctional ligand could include specific antibodies or modified ligands that recognize cell surface receptors of biological importance. Accordingly, this approach could be used to limit tumor angiogenesis, limit tumor growth, block metastasis formation, block inflammation, block viral infection, and treat just about any disease where we identify a cell surface receptor as the molecular basis for disease.

Applications:

- Method of inducing the internalization of target receptors.
- Inhibiting diseases or conditions associated with target receptors, such as HIV infection, cancer, or angiogenesis.
- Treating diseases or conditions associated with target receptors, such as cancer, viral infections, or HIV infections.

Market:

- 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.

- It is estimated that over one million people in the U.S. are living with HIV/AIDS and approximately 50,000 new infections occur each year.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Masashi Narazaki and Giovanna Tosato (NCI).

Patent Status: U.S. Provisional Application No. 61/023,397 filed 24 Jan 2008 (HHS Reference No. E-250-2007/0-US-01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney A. Hastings; 301-451-7337; hastingsw@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Cellular Oncology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the technology aimed at promoting selective receptor internalization as a means to neutralize ligand function and receptor signaling. Please contact John D. Hewes, PhD at 301-435-3121 or hewesj@mail.nih.gov for more information.

Methods of Determining the Prognosis of an Adenocarcinoma

Description of Technology: Available for licensing and commercial

development is a novel method for determining the prognosis of a subject with adenocarcinoma in an organ, such as the lung, and to aid in the selection of a specific therapeutic regimen. Lung adenocarcinoma (AC) is the predominant histological subtype of lung cancer, which is the leading cause of cancer deaths worldwide. The risk of metastasis remains substantial in AC patients, even when a curative resection of early-stage AC is performed. The prognosis includes the determination of the likelihood of survival, the likelihood of metastasis, or both. The method includes quantization of the expression of a plurality of Th1 and Th2 cytokines of interest in the adenocarcinoma and in non-cancerous tissue in the organ. Altered expression of one or more of the Th1 and Th2 cytokines in the adenocarcinoma as compared to the non-cancerous tissue determines the prognosis for the subject. The method is capable of distinguishing patients with lymph node metastasis versus those with short term survival. Furthermore, methods are provided for evaluating the effectiveness of anti-cancer agents.

Applications: Prognosis of adenocarcinoma, aid in the selection of specific therapeutic regimens and evaluation of the effectiveness of anti-cancer agents.

Development Status: The technology is in early stage of development.

Inventors: Curtis C. Harris, Masahiro Seike, Xin Wei Wang (NCI).

Patent Status: PCT Application No. PCT/US2007/073637 filed 16 Jul 2007, which published as WO 2008/009028 on 17 Jan 2008; claiming priority to 14 Jul 2006 (HHS Reference No. E-263-2006/1-PCT-01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301-435-5515; anos@mail.nih.gov.

Dated: October 14, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8-25221 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

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.

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Catalytic Domains of [beta](1,4)-galactosyltransferase I Having Altered Donor and Acceptor Specificities, Domains That Promote In Vitro Protein Folding, and Methods for Their Use

Description of Technology: [beta](1,4)-galactosyltransferase I catalyzes the transfer of galactose from the donor, UDP-galactose, to an acceptor, N-acetylglucosamine, to form a galactose-[beta](1,4)-N-acetylglucosamine bond. This reaction allows galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. The reaction can be used to make many types of molecules having great biological significance. For example, galactose-[beta](1,4)-N-acetylglucosamine linkages are very important for cellular recognition and binding events as well as cellular interactions with pathogens, such as viruses. Therefore, methods to synthesize these types of bonds have many applications in research and medicine to develop pharmaceutical agents and improved vaccines that can be used to treat disease.

The present invention is based on the surprising discovery that the enzymatic activity of [beta](1,4)-galactosyltransferase can be altered such that the enzyme can make chemical bonds that are very difficult to make by other methods. These alterations involve mutating the enzyme such that the mutated enzyme can transfer many different types of sugars from sugar nucleotide donors to many different types of acceptors. Therefore, the mutated [beta](1,4)-galactosyltransferases of the invention can be used to synthesize a variety of

products that, until now, have been very difficult and expensive to produce.

The invention also provides amino acid segments that promote the proper folding of a galactosyltransferase catalytic domain and mutations in the catalytic domain that enhance folding efficiency and make the enzyme stable at room temperature. The amino acid segments may be used to properly fold the galactosyltransferase catalytic domains of the invention and thereby increase their activity. The amino acid segments may also be used to increase the activity of galactosyltransferases that are produced recombinantly. Accordingly, use of the amino acid segments according to the invention allows for production of [beta](1,4)-galactosyltransferases having increased enzymatic activity relative to [beta](1,4)-galactosyltransferases produced in the absence of the amino acid segments.

Applications: Synthesis of polysaccharide antigens for conjugate vaccines, glycosylation of monoclonal antibodies, and as research tools.

Development Status: The enzymes have been synthesized and preclinical studies have been performed.

Inventors: Pradman K. Qasba, Boopathy Ramakrishnan, Elizabeth Boeggeman (NCI).

Patent Status: U.S. Patent Application No. 11/178,230 filed 08 Jul 2005, allowed (HHS Reference No. E-230-2002/2-US-03); Foreign rights also available.

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301-435-5236; stansbej@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of galactose and modified galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. Please contact John D. Hewes, PhD, at 301-435-3121 or hewesj@mail.nih.gov for more information.

Methods of Glycosylation and Bioconjugation

Description of Technology: Eukaryotic cells express several classes of oligosaccharides attached to proteins or lipids. Animal glycans can be N-linked via beta-GlcNAc to Asn (N-glycans), O-linked via -GalNAc to Ser/Thr (O-glycans), or can connect the carboxyl end of a protein to a phosphatidylinositol unit (GPI-anchors) via a common core glycan structure.

Beta (1,4)-galactosyltransferase I catalyzes the transfer of galactose from the donor, UDP-galactose, to an acceptor, N-acetylglucosamine, to form a galactose-beta (1,4)-N-acetylglucosamine bond, and allows galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. Examples of these molecules include other sugars and proteins. The reaction can be used to make many types of molecules having great biological significance. For example, galactose-beta (1,4)-N-acetylglucosamine linkages are important for many recognition events that control how cells interact with each other in the body, and how cells interact with pathogens. In addition, numerous other linkages of this type are also very important for cellular recognition and binding events as well as cellular interactions with pathogens, such as viruses. Therefore, methods to synthesize these types of bonds have many applications in research and medicine to develop pharmaceutical agents and improved vaccines that can be used to treat disease.

The invention provides *in vitro* folding methods for a polypeptidyl-alpha-N-acetylgalactosaminyltransferase (pp-GalNAc-T) that transfers GalNAc to Ser/Thr residue on a protein. The application claims that this *in vitro*-folded recombinant ppGalNAc-T enzyme transfers modified sugar with a chemical handle to a specific site in the designed C-terminal polypeptide tag fused to a protein. The invention provides methods for engineering a glycoprotein from a biological substrate, and methods for glycosylating a biological substrate for use in glycoconjugation. Also included in the invention are diagnostic and therapeutic uses.

Application: Enzymes and methods are provided that can be used to promote the chemical linkage of biologically important molecules that have previously been difficult to link.

Development Status: Enzymes have been synthesized and characterization studies have been performed.

Inventors: Pradman Qasba and Boopathy Ramakrishnan (NCI).

Patent Status: PCT Application No. PCT/US2008/006248 filed 14 May 2008, claiming priority to 14 May 2007 (HHS Reference No. E-204-2007/0-PCT-02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301-435-5236; stansbej@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute is seeking

statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD, at 301-435-3121 or hewesj@mail.nih.gov for more information.

Alpha 1-3 N-Acetylgalactosaminyltransferases With Altered Donor and Acceptor Specificities, Compositions, and Methods of Use

Description of Technology: The present invention relates to the field of glycobiology, specifically to glycosyltransferases. The present invention provides structure-based design of novel glycosyltransferases and their biological applications.

The structural information of glycosyltransferases has revealed that the specificity of the sugar donor in these enzymes is determined by a few residues in the sugar-nucleotide binding pocket of the enzyme, which is conserved among the family members from different species. This conservation has made it possible to reengineer the existing glycosyltransferases with broader sugar donor specificities. Mutation of these residues generates novel glycosyltransferases that can transfer a sugar residue with a chemically reactive functional group to N-acetylglucosamine (GlcNAc), galactose (Gal) and xylose residues of glycoproteins, glycolipids and proteoglycans (glycoconjugates). Thus, there is potential to develop mutant glycosyltransferases to produce glycoconjugates carrying sugar moieties with reactive groups that can be used in the assembly of bio-nanoparticles to develop targeted-drug delivery systems or contrast agents for medical uses.

Accordingly, methods to synthesize N-acetylglucosamine linkages have many applications in research and medicine, including in the development of pharmaceutical agents and improved vaccines that can be used to treat disease.

This application claims compositions and methods based on the structure-based design of alpha 1-3 N-Acetylgalactosaminyltransferase (alpha 3 GalNAc-T) mutants from alpha 1-3galactosyltransferase (a3Gal-T) that can transfer 2'-modified galactose from the corresponding UDP-derivatives due to mutations that broaden the alpha 3Gal-T donor specificity and make the enzyme alpha3 GalNAc-T.

Application: Development of pharmaceutical agents and improved vaccines.

Development Status: Enzymes have been synthesized and preclinical studies have been performed.

Inventors: Pradman Qasba, Boopathy Ramakrishnan, Elizabeth Boeggman, Marta Pasek (NCI).

Patent Status: PCT Application No. PCT/US2007/018678 filed 22 Aug 2007 (HHS Reference No. E-279-2007/0-PCT-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301-435-5236; stansbej@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize structure-based design of novel glycosyltransferases. Please contact John D. Hewes, PhD, at 301-435-3121 or hewesj@mail.nih.gov for more information.

Beta 1,4-Galactosyltransferases With Altered Donor and Acceptor Specificities, Compositions and Methods of Use

Description of Technology: The present invention relates to the field of glycobiology, specifically to glycosyltransferases. The present invention provides structure-based design of novel glycosyltransferases and their biological applications.

The structural information of glycosyltransferases has revealed that the specificity of the sugar donor in these enzymes is determined by a few residues in the sugar-nucleotide binding pocket of the enzyme, which is conserved among the family members from different species. This conservation has made it possible to reengineer the existing glycosyltransferases with broader sugar donor specificities. Mutation of these residues generates novel glycosyltransferases that can transfer a sugar residue with a chemically reactive functional group to N-acetylglucosamine (GlcNAc), galactose (Gal) and xylose residues of glycoproteins, glycolipids and proteoglycans (glycoconjugates). Thus, there is potential to develop mutant glycosyltransferases to produce glycoconjugates carrying sugar moieties with reactive groups that can be used in the assembly of bio-nanoparticles to develop targeted-drug delivery systems or contrast agents for medical uses.

Accordingly, methods to synthesize N-acetylglucosamine linkages have many applications in research and medicine, including in the development

of pharmaceutical agents and improved vaccines that can be used to treat disease.

The invention claims beta (1,4)-galactosyltransferase I mutants having altered donor and acceptor and metal ion specificities, and methods of use thereof. In addition, the invention claims methods for synthesizing oligosaccharides using the beta (1,4)-galactosyltransferase I mutants and to using the beta (1,4)-galactosyltransferase I mutants to conjugate agents, such as therapeutic agents or diagnostic agents, to acceptor molecules. More specifically, the invention claims a double mutant beta 1, 4 galactosyltransferase, human beta-1, 4-Tyr289Leu-Met344His-Gal-T1, constructed from the individual mutants, Tyr289Leu-Gal-T1 and Met344His-Gal-T1, that transfers modified galactose in the presence of magnesium ion, in contrast to the wild-type enzyme which requires manganese ion.

Application: Development of pharmaceutical agents and improved vaccines.

Development Status: Enzymes have been synthesized and preclinical studies have been performed.

Inventors: Pradman Qasba, Boopathy Ramakrishnan, Elizabeth Boeggman (NCI).

Patent Status: PCT Application No. PCT/US2007/018656 filed 22 Aug 2007 (HHS Reference No. E-280-2007/0-PCT-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301-435-5236; stansbej@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize glycosyltransferases. Please contact John D. Hewes, PhD, at 301-435-3121 or hewesj@mail.nih.gov.

Dated: October 15, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8-25222 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Reagent Development for Toll-like and Other Innate Immune Receptors (U24).

Date: November 10, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-496-0818, keichelberg@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-25212 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

Date: November 17, 2008.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Erica L. Brown, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2639, ebrown@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-25215 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Translational Human Immunology Centers.

Date: November 20-21, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-451-2605, ks216i@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Translational Human Immunology Centers.

Date: December 4-5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-451-2605, ks216i@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-25216 Filed 10-22-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2008-0019]

Privacy Act of 1974; Department of Homeland Security Payroll, Personnel, and Time and Attendance Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of record notices, the Department of Homeland Security proposes to consolidate four legacy record systems: Treasury/CS.165 Overtime Earnings, Treasury/FLETC.001 FLETC Payroll/Personnel Records System, Treasury/CS.170 Overtime

Reports, and Treasury/CS.251
Unscheduled Overtime Report (Customs
Form 31) into one Department of
Homeland Security-wide system of
records. This system will help the
Department of Homeland Security
ensure proper payment of salary and
benefits to Department of Homeland
Security personnel and track time
worked for reporting and compliance
purposes. Categories of individuals,
categories of records, and the routine
uses of these legacy system of records
notices have been consolidated and
updated to better reflect the
Department's payroll, personnel, and
time and attendance record systems.
This consolidated system, titled Payroll,
Personnel, and Time and Attendance
Records, will be included in the
Department's inventory of record
systems.

DATES: Submit comments on or before
November 24, 2008. This new system
will be effective November 24, 2008.

ADDRESSES: You may submit comments,
identified by docket number DHS-
2008-0019 by one of the following
methods:

- *Federal e-Rulemaking Portal:*
<http://www.regulations.gov>. Follow the
instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy
Officer, Privacy Office, Department of
Homeland Security, Washington, DC
20528.
- *Instructions:* All submissions
received must include the agency name
and docket number for this rulemaking.
All comments received will be posted
without change to [http://](http://www.regulations.gov)
www.regulations.gov, including any
personal information provided.
- *Docket:* For access to the docket, to
read background documents, or
comments received go to [http://](http://www.regulations.gov)
www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For
general questions and privacy issues
please contact: Hugo Teufel III (703-
235-0780), Chief Privacy Officer,
Privacy Office, Department of Homeland
Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the
Homeland Security Act of 2002, Public
Law 107-296, Section 1512, 116 Stat.
2310 (November 25, 2002), the
Department of Homeland Security
(DHS) and its components and offices
have relied on preexisting Privacy Act
systems of records for the collection and
maintenance of records that concern
DHS's payroll, personnel, and time and
attendance records.

As part of its efforts to streamline and
consolidate its Privacy Act record
systems, DHS is establishing a new
agency-wide system of records under
the Privacy Act (5 U.S.C. 552a) for DHS
payroll records. This will ensure that all
components of DHS follow the same
privacy rules for collecting and
handling payroll, personnel, and time
and attendance records.

In accordance with the Privacy Act of
1974 and as part of DHS's ongoing effort
to review and update legacy system of
record notices, DHS proposes to
consolidate four legacy record systems:
Treasury/CS.165 Overtime Earnings (66
FR 52984 October 18, 2001), Treasury/
FLETC.001 FLETC Payroll/Personnel
Records System (66 FR 43955 August
21, 2001), Treasury/CS.170 Overtime
Reports (66 FR 52984 October 18, 2001),
and Treasury/CS.251 Unscheduled
Overtime Report (Customs Form 31) (66
FR 52984 October 18, 2001) into one
DHS-wide system of records. This
system will help DHS ensure proper
payment of salary and benefits to DHS
personnel and track time worked for
reporting and compliance purposes.
Categories of individuals, categories of
records, and the routine uses of these
legacy system of records notices have
been consolidated and updated to better
reflect the Department's payroll,
personnel, and time and attendance
record systems. This consolidated
system, titled Payroll, Personnel, and
Time and Attendance Records, will be
included in the Department's inventory
of record systems.

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
for which information is retrieved by
the name of an individual or by some
identifying number, symbol, or other
identifying particular assigned to the
individual. In the Privacy Act, an
individual is defined to encompass
United States citizens and legal
permanent residents. As a matter of
policy, DHS extends administrative
Privacy Act protections to all
individuals where systems of records
maintain information on U.S. citizens,
lawful permanent residents, and
visitors. Individuals may request access
to their own records that are maintained
in a system of records in the possession
or under the control of DHS by

complying with DHS Privacy Act
regulations, 6 CFR part 5.

The Privacy Act requires that each
agency publish in the **Federal Register**
a description denoting the type and
character of each system of records in
order to make agency recordkeeping
practices transparent, to notify
individuals about the use of their
records, and to assist the individual to
more easily find files within the agency.
Below is a description of the Payroll
Records System of Records.

In accordance with 5 U.S.C. 552a(r),
DHS has provided a report of this
revised system of records to the Office
of Management and Budget and to the
Congress.

SYSTEM OF RECORDS:

DHS/ALL-019.

SYSTEM NAME:

Department of Homeland Security
Payroll, Personnel, and Time and
Attendance Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several
Headquarters locations; in component
offices of DHS, in both Washington, DC
and field locations; and at DHS
contractual or other Federal agency
payroll service provider locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of
DHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system
include:

Payroll

- Taxes;
- Other Deductions;
- Garnishments;
- Salary Data;
- Retirement Data;
- Pay Period;
- Fiscal Year Data;
- Benefits; and
- Direct Deposit Information.

Personnel

- Social security number;
- Employee's Name;
- Date of Birth;
- Gender, Race/National Origin, and
Disability Data;
- Address Data;
- Duty Location;
- Position Data;
- Awards and Bonuses;
- Employment verification
information;
- Education and training data; and
- Military and veterans data.

Time and Attendance

• Number and type of Hours Worked, (type may for example include, regular law enforcement availability pay (LEAP), overtime (including administratively uncontrollable overtime (AUO)), night differential, and Federal Equal Pay Act (FEPA));

- Compensatory time earned and used;
- Compensatory travel earned;
- Investigative case title and tracking number (used to track time worked associated with a specific case);
- Fair labor Standards Act (FLSA) compensation;
- Tour of Duty;
- Leave requests, balances and credits;
- Training time; and
- Military Leave.

Data Reporting and Personnel and Pay Processing Tables

- Nature of action codes;
- Civil service authority codes;
- Standard remarks;
- Signature block table;
- Position title table;
- Financial organization table; and
- Salary tables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; and Executive Order 9373.

PURPOSE(S):

The purpose of this system is to ensure proper payment of salary and benefits to DHS personnel and to track time worked for reporting and compliance purposes.

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) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. 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.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. 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 DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, 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.

H. To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

I. To designated officers and employees of Federal, State, local or international agencies in connection with the hiring or continued employment of an individual, the conduct of a suitability or security investigation of an individual, the grant, renewal, suspension, or revocation of a security clearance, or the certification of security clearances, to the extent that DHS determines the information is relevant and necessary to the hiring agency's decision.

J. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

K. To a Federal, State, local, or private agency so that the agency may adjudicate an individual's eligibility for a benefit.

L. To the other Federal agencies who provide payroll personnel processing services under a cross-servicing agreement for purposes relating to the conversion of DHS employee payroll and personnel processing services; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer.

M. To Federal, State, or local agencies for use in locating individuals and verifying their income sources to establish paternity, establish and modify orders of support, and for enforcement of related court orders.

N. To provide wage and separation information to another agency as required by law for payroll purposes.

O. To the Office of Personnel Management, the Merit System Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

P. To the news media and the public, with the approval of the Chief Privacy

Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Data may be retrieved by an individual's name, social security number, position, organizational element, pay period, investigative case title or tracking number (for time worked associated with a specific case), and/or fiscal year.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Time and attendance records are destroyed after a General Accountability Office audit or when six years old, whichever is sooner. These records are maintained in accordance with National Archives and Records Administration General Records Schedule 2, Item 7.

Individual employee payroll records are destroyed when 56 years old in accordance with National Archives and Records Administration General Records Schedule 2, Item 1.

Supervisor personnel files are reviewed annually and destroyed when

a file is superseded/obsolete, or within 1 year after separation or transfer of an employee. Duplicate official personnel records are destroyed when six months old. These two types of records are maintained in accordance with National Archives and Records Administration General Records Schedule 1, Item 18.

SYSTEM MANAGER AND ADDRESS:

For Headquarters of DHS, the System Manager is the Office of the Chief Human Capital Officer, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under "contacts."

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0550, Washington, DC 20528.

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 under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> 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) may 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.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information originates from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 14, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8-24993 Filed 10-22-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2008-0021]

Privacy Act of 1974; Department of Homeland Security General Legal Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of record notices, the Department of Homeland Security proposes to consolidate seven legacy record systems: Treasury/CS.022 Attorney Case File, Treasury/CS.042 Case and Complaint File, Treasury/CS.043 Case Files (Associate Chief Counsel Gulf Customs Management Center), Treasury/CS.061 Court Case File, Treasury/CS.133 Justice Department Case File, Treasury/CS.138 Litigation Issue Files, and Justice/INS-022 The Immigration and Naturalization Service Attorney/Representative Complaint/Petition Files. The Department of Homeland Security also proposes to partially consolidate Treasury/USSS.002 Chief Counsel Record System into this system. This system will assist attorneys in providing legal advice to the Department of

Homeland Security on a wide variety of legal issues. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been reviewed and updated to better reflect the Department's general legal records systems of records. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This consolidated system, titled General Legal Files, will be included in the Department's inventory of record systems.

DATES: Submit comments on or before November 24, 2008. The new system of records will be effective November 24, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS-2008-0021 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern general legal records.

As part of its efforts to streamline and consolidate its Privacy Act records systems, DHS is establishing a new

agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS general legal records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling general legal records.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of record notices, DHS proposes to consolidate seven legacy record systems: Treasury/CS.022 Attorney Case File (66 FR 52984 October 18, 2001), Treasury/CS.042 Case and Complaint File (66 FR 52984 October 18, 2001), Treasury/CS.043 Case Files (Associate Chief Counsel Gulf Customs Management Center) (66 FR 52984 October 18, 2001), Treasury/CS.061 Court Case File (66 FR 52984 October 18, 2001), Treasury/CS.133 Justice Department Case File (66 FR 52984 October 18, 2001), Treasury/CS.138 Litigation Issue Files (66 FR 52984 October 18, 2001), and Justice/INS-022 The Immigration and Naturalization Service Attorney/Representative Complaint /Petition Files (64 FR 70288 December 16, 1999). DHS also proposes to partially consolidate Treasury/ USSS.002 Chief Counsel Record System (66 FR 45362 August 28, 2001) into this system. This system will assist attorneys in providing legal advice to DHS on a wide variety of legal issues. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been reviewed and updated to better reflect DHS's general legal record systems. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed.

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 for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative

Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the General Legal Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

System of Records:

DHS/ALL-017.

SYSTEM NAME:

Department of Homeland Security General Legal Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS, in both Washington, DC, and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include DHS employees and former employees, other Federal agency employees and former employees, members of the public, individuals involved in litigation with DHS or involving DHS, individuals who either file administrative complaints with DHS or are the subjects of administrative complaints initiated by DHS, individuals who are named parties in cases in which DHS believes it will or may become involved, matters within the jurisdiction of the Department either as plaintiffs or as defendants in both civil and criminal matters, witnesses, and to the extent not covered by any other system, tort and property claimants who have filed claims against the Government and individuals who are subject of an action requiring approval or action by a DHS official, such as appeals, actions, training, awards, foreign travel, promotions, selections, grievances and delegations,

OGC attorneys to whom cases are assigned, and attorneys and authorized representatives for whom DHS has received complaints regarding their practices before DHS and/or the Executive Office for Immigration Review (EOIR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Names of individuals involved in each legal case;
- Names of witnesses;
- Records relating to litigation by or against the U.S. Government (or litigation in which the U.S. Government is not a party, but has an interest) resulting from questions concerning DHS cases and legal actions that the Department either is involved in or in which it believes it will or may become involved;
- Claims by or against the Government, other than litigation cases, arising from a transaction with DHS, and documents related thereto, including demographic information, vouchers, witness statements, legal decisions, and related material pertaining to such claims;
- Investigation reports;
- Legal authority;
- Legal opinions and memoranda;
- Criminal actions;
- Criminal conviction records;
- Claims and records regarding discrimination, including employment and sex discrimination;
- Claims and records regarding the Rehabilitation Act;
- Claims against non-DHS attorneys and/or representatives who engage in unethical activities or exhibit unprofessional behavior;
- Copies of petitions filed with DHS;
- Personnel matters;
- Contracts;
- Foreclosures;
- Actions against DHS officials;
- Titles to real property;
- Records relating to requests for DHS records other than requests under the Freedom of Information Act and the Privacy Act of 1974;
- Testimonies of DHS employees in Federal, State, local, or administrative criminal or civil litigation;
- Documentary evidence;
- Supporting documents including the legal and programmatic issues of the case, correspondence, legal opinions and memoranda and related records;
- State Bar grievance/discipline proceedings records;
- Security Clearance Information;
- Records concerning requests for information regarding the use of reproductions of obligations of the

United States, including bonds, checks, coins, coupons, currencies (U.S. and foreign), fractional notes, postage stamps (U.S. and foreign), postal money orders, and postmarks;

- Any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any other court filing or administrative filing or evidence;
- Employee and former employee ethics question forms and responses;
- Court transcripts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; The Homeland Security Act of 2002, Public Law 107–296.

PURPOSE(S):

The purpose of this system is to assist DHS attorneys in providing legal advice to DHS management on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the plaintiff(s) and defendant(s) response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent DHS during litigation, and to maintain internal statistics.

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) as follows:

- A. To the Department of Justice (including United States Attorney Offices), other Federal agency conducting litigation, in proceedings before any court, adjudicative or administrative body, or other federal executive office with an interest in the litigation when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:
 1. DHS or any component thereof;
 2. any employee of DHS in his/her official capacity;
 3. any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or
 4. 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.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. 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 DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, 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.

H. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

I. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

J. To a Federal, State, local, tribal, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit.

K. To international and foreign governmental entities in accordance with law and formal or informal international agreement.

L. To State Bar Grievance Committees and local Attorney General offices for disbarment or disciplinary proceedings.

M. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) collecting on behalf of the United States Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities behind a locked door. The electronic records are stored on magnetic disc, tape, digital media, CD-ROM, and computer.

RETRIEVABILITY:

Data may be retrieved by individual's name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are kept for 10 years, in accordance with National Archives and Records Administration General Records Schedule [schedule in process.]

SYSTEM MANAGER AND ADDRESS:

For Headquarters of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under "contacts."

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245

Murray Drive, SW., Building 410, STOP-0550, Washington, DC 20528.

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 under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> 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) may 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.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information originates with DHS and its components, court subpoenas, law enforcement agencies, other Federal, state, and local courts, State bar licensing agencies, State bar grievance agencies, and inquiries and/or complaints from witnesses or members of the general public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland

Security has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5).

Dated: October 14, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8-25002 Filed 10-22-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2008-0083]

Privacy Act of 1974; Department of Homeland Security Contractors and Consultants System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of record notices, the Department of Homeland Security is giving notice that it proposes to consolidate one legacy system of records notice, DOT/CG 536 Contract and Real Property File System as a Department of Homeland Security-wide system of records notice titled Department of Homeland Security Contractors and Consultants. The Department of Homeland Security also proposes to partially consolidate one legacy record system, Treasury/USSS.001 Administrative Information System into this Department-wide system of records. This system will allow the Department of Homeland Security to collect and maintain records on the Department's contractors and consultants. Categories of individuals, categories of records, and the routine uses of this legacy system have been reviewed and updated to better reflect the Department's contractor and consultant record system. This reclassified system, titled Department of Homeland Security Contractors and Consultants, will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 24, 2008. This new system will be effective November 24, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS-2008-0083 by one of the following methods:

- **Federal e-Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 1-866-466-5370.

- **Mail:** Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- **Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <http://www.regulations.gov>, including any personal information provided.

- **Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern DHS contractors and consultants.

As part of its efforts to streamline and consolidate its records systems, DHS is establishing an agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for these contractor and consultant records. This will ensure that all components of DHS follow the same privacy rules for collecting and maintaining contractor and consultant records. The collection and maintenance of this information will assist DHS in meeting its obligation to collect and maintain records on DHS contractors and consultants.

In accordance with the Privacy Act of 1974 and as part of the DHS's ongoing effort to review and update legacy system of record notices, DHS is giving notice that it proposes to consolidate one legacy system of records notice, DOT/CG 536 Contract and Real Property File System (65 FR 19476 April 11, 2000), as a DHS-wide system of records notice titled Department of Homeland Security Contractors and Consultants. DHS also proposes to partially consolidate one legacy record system: Treasury/USSS.001 Administrative Information System (66 FR 45362

August 28, 2001) into this Department-wide system of records. This system will allow DHS to collect and maintain records on the Department's contractors and consultants. Categories of individuals, categories of records, and the routine uses of this legacy system have been reviewed and updated to better reflect the DHS's contractor and consultant record system. This reclassified system, titled Department of Homeland Security Contractors and Consultants, will be included in DHS's inventory of record systems.

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 for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

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 regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS Contractors and Consultants System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

System of Records:

DHS/ALL-021.

SYSTEM NAME:

Department of Homeland Security
Contractors and Consultants.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS, in both Washington, DC, and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include any individual who serves as a contractor or consultant to DHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social security number;
- Home address;
- Telephone numbers (work, home, mobile);
- E-mail addresses;
- Contract name and number;
- Employer;
- Work address;
- Job title;
- Labor category;
- Relevant work experience;
- DHS-issued property in the possession of the contractor/consultant for the purpose of fulfilling contractual requirements;
- Vendor lists;
- Correspondence between the contractor and DHS;
- Bidders lists;
- Permits;
- Licenses;
- Easement;
- Deliverables;
- Proposals;
- White papers; and
- Key personnel resumes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, The Homeland Security Act of 2002, Public Law 107-296; Executive Order 9373; Reorganization Plan No. 2 of 1970 (31 U.S.C. 1111); Executive Order 11541; the Office of Federal Procurement Policy Act (41 U.S.C. 405); and the Federal Activities Inventory Reform (FAIR) Act of 1998 (31 U.S.C. 501 note).

PURPOSE(S):

The purpose of this system is to collect and maintain records on DHS contractors and consultants.

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 of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or
4. 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.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. 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 DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed

compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, 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.

H. To Federal and state entities when relevant and necessary to disclose information on DHS or its components purchases and contracts.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records in this system are stored electronically or as paper records in secure facilities in a locked drawer and/or behind a secured locked door. The electronic records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by name, and/or contract name and number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained for six years and three months after the final payment to a contractor/consultant in accordance with National Archives and Records Administration-approved General Records Schedule 3, Item 3—General Procurement Files.

SYSTEM MANAGER AND ADDRESS:

For Headquarters and components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under "contacts."

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0550, Washington, DC 20528.

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 under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA,

<http://www.dhs.gov> 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) may 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.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, contractors, consultants, bidders, financial institutions, insurance companies, community associations, and other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 15, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8-25205 Filed 10-22-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY**Office of the Secretary**

[Docket No. DHS-2008-0009]

Privacy Act of 1974; Department of Homeland Security Asset Management Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate four legacy record systems: Justice/INS-004 The Asset Management Information System

(AMIS), FEMA/ADM-2 Office Services File System, Treasury/CS.044 Certificates of Clearance, and Treasury/CS.201 Property File Non-Expendable into one Department-wide system of records. The Department of Homeland Security also proposes to partially consolidate one legacy record system: Treasury/USSS.001 Administrative Information System into this Department-wide system of records. This system will allow the Department of Homeland Security to collect and maintain records of all Department-owned or controlled property that has been issued to current and former DHS employees and contractors. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's asset management record systems. This consolidated system, titled Asset Management, will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 24, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS-2008-0009 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <http://www.regulations.gov>, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:**I. Background**

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act

systems of records notices for the collection and maintenance of records that concern asset management with regards to any employee or contractor who has been assigned DHS property.

As part of its efforts to streamline and consolidate its records systems, DHS is establishing a consolidated system of records under the Privacy Act (5 U.S.C. 552a) for the DHS asset management records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling asset management records. The collection and maintenance of asset management information assists DHS in meeting its obligation to manage Departmental assets assigned to employees, such as computers, telephones, or other assets.

In accordance with the Privacy Act of 1974, DHS is giving notice that it proposes to consolidate four legacy record systems: Justice/INS-004 The Asset Management Information System (AMIS) (67 FR 64136 October 17, 2002), FEMA/ADM-2 Office Services File System (55 FR 37182 September 7, 1990), Treasury/CS.044 Certificates of Clearance (66 FR 52984 October 18, 2001), and Treasury/CS.201 Property File Non-Expendable (66 FR 52984 October 18, 2001) into one DHS-wide system of records. DHS also proposes to partially consolidate one legacy record system: Treasury/USSS.001 Administrative Information System (66 FR 45362 August 28, 2001) into this DHS-wide system of records. This system will allow DHS collect and maintain records of all Department-owned or controlled property that has been issued to current and former DHS employees and contractors. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's asset management record systems. This consolidated system, titled Asset Management, will be included in DHS's inventory of record systems.

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 for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the

individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

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 record keeping practices transparent, to notify individuals regarding the uses to which of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the Asset Management System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

System of Records:

DHS/ALL-010.

SYSTEM NAME:

Department of Homeland Security Asset Management Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS, in both Washington, DC, and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include all current and former DHS employees, and contractors assigned government-owned assets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records maintained in this system include:

- Individual's name;
- Social security number;
- E-mail address;
- Office name;
- Office location;
- Office telephone number;
- Property management records,

which include information on government-owned property (e.g. laptop

computers, communication equipment, firearms, and other assets) in the personal custody of the individuals covered by this system and used in the performance of their official duties, as well as outstanding debts related to said property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; 40 U.S.C. 121; 41 CFR Chapter 101; and Executive Order 9373.

PURPOSE(S):

The purpose of this system is to track all DHS-owned or controlled property that has been issued to current and former DHS employees and contractors.

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 of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or
4. 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.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as

authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. 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 DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, 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.

H. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, as amended, 5 U.S.C. 7111 and 7114.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the

extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by name, personnel number, and/or other unique personal identifier.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have the appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are destroyed in accordance with the following: National Archives Records Administration General Record Schedule 10, Motor Vehicle and Aircraft Maintenance and Operations Records, Items 2a (destroy when three months old) and 5 (destroy six years after case is closed); General Record Schedule 8, Stores, Plant, and Cost Accounting Records, Item 5 (destroy when three years old), and General Records Schedule 23 (destroy two-five years), Records Common to Most Offices within Agencies.

SYSTEM MANAGER AND ADDRESS:

For Headquarters components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under "contacts."

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in

this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0550, Washington, DC 20528.

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 under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> 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) may 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.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are generated from property purchase orders and receipts; acquisition, transfer and disposal data; employee locator documentation, or otherwise from the record subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 15, 2008.

Hugo Teufel III,

*Chief Privacy Officer, Department of
Homeland Security.*

[FR Doc. E8-25207 Filed 10-22-08; 8:45 am]

BILLING CODE 4410-10-P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency****Availability of Flood Hazard Maps and
Data**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is completing the update and conversion to digital of the National Flood Insurance Program flood hazard map inventory. As part of the Flood Map Modernization Program, FEMA will discontinue the public distribution of paper Flood Insurance Rate Maps, Flood Insurance Study reports, and related flood hazard map products.

FEMA will provide communities where the flood hazard information is updated with an updated paper map to satisfy local regulatory requirements for a paper map product.

For all other requests, FEMA will distribute digital Flood Insurance Rate Maps, Flood Insurance Study reports, and related flood hazard map products in place of the paper versions. Over the past several years, FEMA has transitioned from paper maps to digital map images and digital flood hazard data as the primary flood hazard information products. These products will still be available through the FEMA Map Service Center. This change will reduce duplication of effort and reduce the cost for updating flood hazard maps.

DATES: This change is effective as of October 1, 2009.

ADDRESSES: Information about FEMA Flood Hazard Maps and Data is available on the Map Service Center Web site <http://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Rooney, Data and Dissemination Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (paul.rooney@dhs.gov).

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is responsible for identifying

high risk flood areas to support the National Flood Insurance Program (NFIP). These areas have historically been identified on paper Flood Insurance Rate Maps (FIRMs). Over the past several years, FEMA has introduced new digital products including digital map images (the full size FIRM Scans and letter size FIRMettes) and digital geospatial flood hazard data (the Digital Flood Insurance Rate Map (DFIRM) Database product and National Flood Hazard Layer (NFHL)). These digital products now make up the vast majority of the flood hazard information distributed by FEMA and are equivalent to the paper maps for any official activities under the NFIP.

FEMA will continue to provide local governments a paper copy of their flood hazard map and flood insurance study report when the map is updated by FEMA. FEMA will discontinue all other distribution of paper maps and study reports beginning with map update projects where the letter of final determination is issued on or after October 1, 2009. The letter of final determination is issued six months before new flood maps become effective for NFIP regulatory purposes.

FEMA will continue to provide digital flood hazard data products for Internet download, on CD-ROM, and via Web Mapping Service. Federal, State, and local government customers that have been receiving paper products will now receive digital flood hazard maps and data, and continue to be exempt from fees (specified in 42 U.S.C. 4101).

This change will allow FEMA to realize significant cost savings in the map update process by eliminating the need to generate large format film negatives to support offset printing. It will also save the cost of printing and distributing the paper maps to fee exempt customers. This change simplifies the products available depicting flood hazard for a location.

The FEMA Map Service Center provides complete information about the digital flood hazard data products, free tools, and easy-to-follow instructions for using them at <http://msc.fema.gov>.

Dated: October 9, 2008.

Michael K. Buckley,

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

[FR Doc. E8-25269 Filed 10-22-08; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[FEMA-1801-DR]

**North Carolina; 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 North Carolina (FEMA-1801-DR), dated October 8, 2008, and related determinations.

DATES: *Effective Date:* October 8, 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 October 8, 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 North Carolina resulting from Tropical Storm Hanna during the period of September 4-15, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this declared major disaster:

Beaufort, Brunswick, and Person Counties for Public Assistance.

All counties within the State of North Carolina 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. E8-25262 Filed 10-22-08; 8:45 am]
BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1800-DR]

Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA-1800-DR), dated October 3, 2008, and related determinations.

DATES: *Effective Date:* October 5, 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 the incident period for this disaster is closed effective October 5, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In 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. E8-25261 Filed 10-22-08; 8:45 am]
BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1792-DR]

Louisiana; Amendment No. 4 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:* October 10, 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.

Livingston, Orleans, St. Martin, and Tangipahoa Parishes for Individual Assistance. Allen and St. Tammany Parishes for Individual Assistance and Public Assistance.

Bienville, Concordia, De Soto, Red River, St. Bernard, St. Charles, St. John the Baptist, and Union Parishes for Public Assistance.

Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson, Jefferson Davis, Lafourche, Plaquemines, Sabine, St. Mary, Terrebonne, Vermilion, and Vernon Parishes for Public Assistance [Categories C-G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public 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. E8-25254 Filed 10-22-08; 8:45 am]
BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1792-DR]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-1792-DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* October 8, 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 October 8, 2008, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of Louisiana, resulting from Hurricane Ike beginning on September 11, 2008, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangement concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act).

Therefore, I amend my previous declaration of September 13, 2008, and authorize Federal funds for assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 100 percent of the total eligible costs for a 44-day period retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–25258 Filed 10–22–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1791–DR]

Texas; 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 for the State of Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* October 8, 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 October 8, 2008, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of Texas, resulting from Hurricane Ike during the period of September 7 to October 2, 2008, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangement concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act).

Therefore, I amend my previous declarations of September 13, 2008, and September 16, 2008, and authorize Federal funds for assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 100 percent of the total eligible costs for an additional 30 days beyond the previous 14-day period, retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–25259 Filed 10–22–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1791–DR]

Texas; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* October 9, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include 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.

Greg, Harrison, Rusk, and Smith Counties for Individual Assistance.

Shelby County for Individual Assistance and Public Assistance.

Angelina, Brazoria, Fort Bend, Hardin, Newton, Polk, and Tyler Counties for Public Assistance [Categories C–G] (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).

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. E8–25260 Filed 10–22–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Certispec Services USA, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Certispec Services USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Certispec Services USA, Inc., 1448 Texas Avenue, Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Certispec Services USA, Inc., as commercial gauger and laboratory became effective on July 22, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breau, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 16, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–25253 Filed 10–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Oiltest, Inc., as a Commercial Gauger

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

ACTION: Notice of approval of Oiltest, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Oiltest, Inc., 4333 50th Street South, Tampa, FL 33619, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Oiltest, Inc., as commercial gauger became effective on July 24, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT:

Randall Breau, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 16, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–25252 Filed 10–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Omni Hydrocarbon Measurement, as a Commercial Gauger

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

ACTION: Notice of approval of Omni Hydrocarbon Measurement, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Omni Hydrocarbon Measurement, 914 Kennings Ave., Crosby, TX 77532, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Omni Hydrocarbon Measurement, as commercial gauger became effective on February 13, 2008. The next triennial inspection date will be scheduled for February 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breau, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania

Avenue, NW., Suite 1500N,
Washington, DC 20229, 202-344-1060.

Dated: October 16, 2008.

Ira S. Reese,

*Executive Director, Laboratories and
Scientific Services.*

[FR Doc. E8-25251 Filed 10-22-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-36]

Notice of Proposed Information Collection: Comment Request Local Appeals to Single Family Mortgage Limits

AGENCY: Office of the Assistant
Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: December 22, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Lillian_L_Deitzer@HUD.gov or telephone (202) 402-8048.

FOR FURTHER INFORMATION CONTACT: Program Contact, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Local Appeals to Single Family Mortgage Limits.

OMB Control Number, if applicable: 2502-0302.

1. *Description of the need for the information and proposed use:* Any interested party may submit a request for the mortgage limits to be increased in a particular area if they believe that the present limit does not accurately reflect the higher sales prices in that area. Any request for an increase must be accompanied by sufficient housing sales price data to justify higher limits. Typically, this data includes housing sales data extracted from multiple listing services (MLS) that includes all or nearly all one-family and condominium sales in the area for a specified period of time, deleting all non-arms length sales and sales involving two or more family units.

This data should be categorized as shown in the table below in a listing of all, or nearly all, of the one-family properties sold in the area for a period of time, depending on the volume of sales. HUD uses the information collected to determine whether an increase is warranted.

Sales volume	Revised data period (month)
500 or more per month	1
250 to 499 per month	2
250 or less per month	3

These requests are usually submitted by housing industry groups, such as homebuilders, realtors, and mortgage lenders. Most often, the housing sales price data is necessary to support a request for a higher mortgage limit that may be obtained from existing local industry sources, such as the real estate multiple listing services.

The request for an increase to the mortgage limit is required to obtain benefits.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours annually is 31,000. The number of respondents is 4500, the number of responses is 4500, the frequency of response is averaged one per respondent, and the burden hour per response is 7.

Status of the proposed information collection: This is a renewal of OMB Control Number 2502-0302.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 15, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8-25268 Filed 10-22-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5130-N-34]

Privacy Act of 1974; Notice of Matching Program Between the United States Department of Housing and Urban Development (HUD) and the United States Department of Agriculture Rural Housing Service (RHS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program between HUD and the Department of Agriculture RHS.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is announcing a new matching program involving comparisons between data provided by participants in HUD's assisted housing programs and applicants for RHS's rural housing programs. The matching program will be carried out to identify individuals who are receiving excess or duplicate housing assistance as a result of Hurricanes Katrina and Rita.

The matching program will be accomplished by comparing information from HUD's systems of records known as (1) the Tenant Housing Assistance and Contract Verification Data (HUD/H-11 and (2) the Inventory Management System, previously the Public and Indian Housing Information Center (HUD/PIH-4), with disaster emergency assistance data maintained by RHS

Multifamily Programs (MFH) in its system of records known as the Multifamily Information System (MFIS), and Single Family Housing Programs (SFH) in its Dedicated Loan Origination and Servicing System (DLOS) MortgageServ and Unifi record systems for direct loans and grants, and the Guaranteed Loan System (GLS) for guaranteed loans to identify participants who are receiving access to duplicate disaster assistance payments.

DATES: *Effective Date:* Computer matching is expected to begin *November 24, 2008*, unless comments are received which will result in a contrary determination, or 40 days after copies of the underlying matching agreement are signed, approved by HUD and RHS Data Integrity Boards, and sent to both Houses of Congress, whichever is later.

Comments Due Date: *November 24, 2008*.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For the Privacy Act contact Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402-8073. A telecommunications device for hearing-and-speech impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

For further information from recipient agency: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410, (202) 708-1613.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled "Final Guidance Interpreting the Provisions of Public Law 100-503, the CMPPA of 1988" (OMB Guidance), and OMB Circular No. A-130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A-

130, "Transmittal Memorandum No. 4, Management of Federal Information Resources," prescribes Federal agency responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A-130, copies of this notice are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006 (Pub. L. 109-148); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701-1750g); the United States Housing Act of 1937 (42 U.S.C. 1437-1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)); the Inspector General Act of 1978 (5 U.S.C. App. 3); Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-53); and 65 FR 24732 and 64 FR 54930.

Chapter 9, Title I, of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, requires HUD to provide Tenant-Based Rental Assistance only to tenants who received housing assistance prior to the hurricanes and to "those which were homeless or in emergency shelters in the declared disaster area prior to Hurricanes Katrina or Rita." It also requires, with respect to Community Development Fund assistance, that HUD establish procedures to prevent recipients from receiving any duplication of benefits.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and housing agencies (HAs) (but not private owners/management agents for subsidized multifamily projects) to request wage and claim information from State Wage Information Collection Agencies (SWICAs) responsible for administering State unemployment laws in order to undertake computer matching of individual's income and eligibility for

HUD housing assistance. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the HA to request wage and claim information from the SWICAs.

The Inspector General Act authorizes the HUD Inspector General to undertake programs to detect and prevent fraud and abuse in all HUD programs.

RHS, pursuant to section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) 42 U.S.C. 5155, Public Law 93-288, as amended, and 7 CFR part 1951, subpart O, must assure that no person receiving disaster assistance receives unauthorized assistance.

II. Objective To Be Met by the Matching Program

HUD's primary objectives in implementing the computer matching program are: (a) To identify individuals who are receiving housing benefits in excess of those to which they are entitled; and (b) to identify duplicate disaster assistance payments. HUD's Office of General Counsel (OGC) will compare the identity, reported income, family size, address and benefit data of Rural Development's emergency Rental Assistance program contained in MFIS. The comparisons will identify, based on criteria established by HUD-OIG, individuals whose incomes, family size, address, or benefit levels require further verification to determine if they received appropriate levels of Federal assistance.

Similarly, HUD-OIG will compare benefit data of Rural Development's section 502 loan and section 504 loan and grant Natural Disaster/Hurricane programs contained in DLOS and GLS.

Any match (i.e., a "hit") will be further reviewed by the HUD-OIG to determine whether the recipient was eligible to receive the assistance. Hits shall also be provided to, and further reviewed by, RHA and USDA-OIG to determine whether duplicate assistance was provided.

III. Program Description

In this matching program, tenant-provided information included in HUD's systems of records known as the Tenant Housing Assistance and Contract Verification Data (HUD/H-11), last published at 62 FR 11909 (March 13, 1997), and (2) the Inventory Management System, previously the Public and Indian Housing Information Center (HUD/PIH-4), published in the **Federal Register** on October 7, 2002, will be compared with RHS's MFIS, DLOS, and GLS "Disaster Assistance" system of records. RHS will provide

HUD with records from the MFIS, DLOS, and GLS systems that identify recipients of emergency Rental Assistance and Natural Disaster/Hurricane housing loans and grants and loan guarantees. The notice for this system is contained in the System of Records titled "USDA/Rural Development", last published in 63 FR 38546 (July 17, 1998), and the disclosure will be made in accordance with routine use "15," which permits disclosure to another Federal agency "for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits." The comparisons will identify, based on criteria established by HUD-OIG, individuals whose incomes, family size, address, or benefit levels require further verification to determine if they received appropriate levels of Federal assistance.

A. Income Verification Procedures

Any match (i.e., a "hit") will be further reviewed by the HUD-OIG to determine whether the recipient was eligible to receive the assistance. Hits shall also be provided to, and further reviewed by, RHA and USDA-OIG to determine whether duplicate assistance was provided.

In order to protect any individuals whose records are used in matching, the HA or subsidized multifamily project owner or management agent will not suspend, terminate, reduce, or make a final denial of any housing assistance to such individual, or take other adverse action against such individual as a result of information produced by such matching program, until an officer or employee of such agency has independently verified such information. This independent verification includes: (1) Comparing automated tenant data with manual files to verify tenant identity, family composition and reported income; (2) verifying the tenants' income by sending HUD prepared income confirmations to employers for cases where records indicate unreported or under-reported income; (3) analyzing the confirmed information; (4) calculating the unreported income and excessive housing assistance received by the family; (5) determining whether the individual actually has or had access to such income for the individual's own use; and (6) determining the period or periods when the individual actually had such income.

B. Administrative or Legal Actions

HUD-OIG shall also provide reports to RHS and/or USDA-OIG for reasons of information verification concerning excess and/or duplicate housing assistance payments. Upon completion of the verification procedures, cases may be referred to Federal, state or local law enforcement authorities (including HUD-OIG and USDA-OIG) for consideration of criminal or civil prosecution. Cases that are not referred for—or after referral are rejected for—criminal or civil prosecution, may be referred to HAs, multifamily project owners or management agents to initiate administrative actions according to applicable procedures.

A HA, project owner or management agent may not suspend, terminate, reduce, or make a final denial of any housing assistance to any individual or take other adverse action against such individual as a result of information produced by a matching program: (1) Unless the individual has received a statement of the findings, including notice to the individual of the opportunity to contest such findings; and (2) until the expiration of a 30 calendar-day period from the date of the notice in (1).

If the matching subject responds within the 30 calendar-day notice period and indicates acceptance of the validity of the adverse information, immediate action to reduce or terminate benefits may be taken.

IV. Records To Be Matched

A description of the tenant records (one record for each family member) includes these data elements: (1) SSNs for each family member; (2) family control number to identify each tenant with a particular family; (3) Head of Household Indicator; (4) Last Name, First Name, Middle Initial, and Address for household; (5) Sex; (6) Birth Date; (7) Reported Income by source, description and amount; (8) Program Code; and (9) Recertification Date.

DLOS and GLS systems records (one record for each loan/grant) includes these data elements: (1) Account number for each loan/grant; (2) SSNs for each borrower/co-borrower (Borrower ID—primary/secondary); (3) Last Name, First Name, Middle Initial, and Property Address for loan/grant; (5) Sex; (6) Program Title; (7) Date of the Obligation, amount, and unpaid balance; (8) Age of borrower/co-borrower; (9) Date of Application; (10) Date of Approval; and (11) Program Type Code.

For matched applicants (i.e., "hits"), HUD-OIG will match the following information from MFIS, DLOS and GLS:

name(s), address(es), social security number(s), assistance date(s), and rental/loan/grant assistance amount(s).

V. Period of the Match

This agreement shall become effective 30 days after publication of a computer matching notice in the **Federal Register**, or 40 days after the agreement is signed by both Data Integrity Boards and has been transmitted to Congress and the OMB for review, whichever is later. This agreement will terminate when the purpose of the computer match is accomplished, or 18 months from the date this signed agreement is sent to both Houses of Congress and OMB, whichever comes first. Should the purpose not be accomplished within 18 months, the agreement may be extended for one 12-month period, with the mutual agreement of all involved parties, if within three months of the expiration date, the respective Data Integrity Boards review the agreement and find that the program will be conducted without change, find a continued favorable examination of cost/benefit results, and all involved parties certify that the program has been conducted in compliance with this agreement. This agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date this signed agreement is sent to both Houses of Congress and OMB (whichever comes first), by the mutual agreement of all involved parties, with 30 days written notice.

Authority: 5 U.S.C. 552a; 88 Stat. 1986; 42 U.S.C. 3535(d).

Dated: October 16, 2008.

Lisa Schlosser,

Chief Information Officer.

[FR Doc. E8-25267 Filed 10-22-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R7-R-2008-N0068; 70133-1265-000-S3]

Tetlin National Wildlife Refuge, Tok, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the revised comprehensive conservation plan and finding of no significant impact for environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of our Revised

Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) for the Tetlin National Wildlife Refuge (Tetlin Refuge). In this revised CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the revised CCP and FONSI by any of the following methods. You may request a paper copy, a summary, or a CD-ROM containing both.

Agency Web Site: Download a copy of the documents at <http://alaska.fws.gov/nwr/planning/tetpol.htm>.

E-mail: fw7_tetlin_planning@fws.gov. Please include "Tetlin Refuge Revised CCP" in the subject line of the message.

Mail: Mikel Haase, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 231, Anchorage, AK 99503-6199.

In-Person Viewing or Pickup: Call (907) 786-3357 to make an appointment during regular business hours at the USFWS Regional Office, 1011 E. Tudor Road, Anchorage, AK 99503 or call (907) 883-5312 to make an appointment during regular business hours at Tetlin Refuge, Mile Post 1314 Alaska Highway, Tok, AK 99780.

FOR FURTHER INFORMATION CONTACT: Mikel Haase, Planning Team Leader, (907) 786-3402 or fw7_tetlin_planning@fws.gov.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the Tetlin Refuge. We started this process with a notice of intent in the **Federal Register** (69 FR 70704, Dec. 7, 2004) and a revised notice of intent in the **Federal Register** (71 FR 42116, July 25, 2006). We announced the availability of the draft CCP and EA, and requested comments in a notice of availability in the **Federal Register** (72 FR 56371, Oct. 3, 2007).

Tetlin Refuge is located northeast of the Alaska Range, adjacent to the U.S.–Canada border in the headwaters of the Tanana River. It is bordered by Wrangell-St. Elias National Park and Preserve to the south and Canada to the east. The Alaska Highway runs adjacent to its northeastern border. The Refuge lies within the Nabesna/Chisana River Basin, in the Upper Tanana Valley. The large, flat basin of the Upper Tanana River Valley is dominated by lakes, ponds, and wetland tundra. Most of the Refuge is rolling lowlands; however, the Mentasta Mountains in the refuge's southwest corner are rugged, glacier-carved peaks reaching elevations of 8,000 feet. The Refuge boundaries encompass over 900,000 acres, of which

about 700,000 acres are Federal lands. The landscape provides valuable habitat for a wide variety of fish and wildlife species. The Upper Tanana Valley, including Tetlin Refuge, is one of the most significant migratory bird corridors in the world as it is located along three major flyways. The extensive wetlands, rivers, ponds, and forests of the Refuge provide resting and breeding habitats for hundreds of thousands of migratory birds.

We announce our decision and the availability of the FONSI for the revised CCP for the Tetlin Refuge in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment in the EA that accompanied the draft revised CCP.

The CCP will guide us in managing and administering the Tetlin Refuge for the next 15 years. The revised CCP is Alternative B, the preferred alternative in the draft CCP, developed in response to public scoping comments.

Background

The Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371; ANILCA) and the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) require us to develop a CCP for each Alaska refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with national policy and ANILCA.

ANILCA requires us to designate areas according to their respective resources and values and to specify programs and uses within the areas designated. To meet this requirement, the Alaska Region established management categories for refuges including Wilderness, Minimal, Moderate, Intensive, and Wild River management. For each management category we identified appropriate activities, public uses, commercial uses, and facilities. Only the Minimal, Moderate, and Intensive management categories are applied to Tetlin Refuge.

Draft CCP Alternatives

Our draft CCP and EA addressed five issues and evaluated three alternatives. The five significant issues raised during scoping were: (1) The visitor services role of Tetlin Refuge in the upper

Tanana Valley; (2) refuge role in providing opportunities for access and associated facilities for existing and expanding wildlife-dependent uses of the Refuge; (3) management of fire on the Refuge to provide adequate protection of refuge resources and private property within and adjacent to the Refuge; (4) use of prescribed fire as a method of habitat management; and (5) use of fishery management actions to maintain native fish breeding stocks and enhance recreational fishing.

Alternative A (the no-action alternative—a NEPA requirement) described what would happen with a continuation of current management activities and served as a baseline for comparison of other alternatives. Under Alternative A, management of the refuge would continue to follow the current course of action as described in the 1987 Tetlin CCP and Record of Decision as modified by subsequent program-specific plans. Refuge lands would remain in their present management categories—about 564,300 acres (82.7 percent) in Minimal management, 116,600 acres (17.1 percent) in Moderate management, and 1,700 acres (less than one percent) in Intensive management.

Under our selected alternative, Alternative B, refuge lands would continue to be managed in their present management categories. New regional policies and guidelines for national wildlife refuges in Alaska would be incorporated. In addition to the actions included under Alternative A, the Refuge would work to gain "Gateway Community" status for Tok, promote opportunities for current and new public uses and facilities, continue to protect resources and property from fire, emphasizing the use of natural fire and a variety of fire management techniques, and native fisheries would be managed to maintain natural diversity. See below for additional details.

Under Alternative C, no changes in land management classifications would occur. New regional policies and guidelines for national wildlife refuges in Alaska would be incorporated. In addition to actions under Alternatives A and B, this alternative would expand the refuge interpretive program and includes construction of additional interpretive facilities, hiking trails, boat launches, other recreation and access-related facilities, and public use cabins. It would also establish a fee system at some campgrounds to support additional amenities, and mark campsites and maintain portages on canoe routes. Fire suppression would be the primary tool to protect resources and property on the Refuge. Fisheries

management would be the same as under Alternative B.

Comments on the Draft CCP

Comments on the draft CCP/EA for Tetlin Refuge were solicited by the Service from October 3, 2007, through January 18, 2008. During the public review and comment period the Service held public meetings in Fairbanks, Northway, Tanacross, Tetlin, and Tok. The planning team reviewed, analyzed, and summarized all comments received at the public meetings and in writing. We received a number of comments which supported plans for additional recreational opportunities and facilities, additional access to the Refuge, and that all-terrain vehicle use be restricted. Support was expressed for use of natural fire management regimes, restricted use of prescribed fire, and use of aggressive fire control only in or near intensive use areas and around private inholdings. Several comments were made regarding management of fish and wildlife populations-related specifically to invasive species, non-native species, predator control, and trophy fisheries.

Selected Alternative—Alternative B

Under the selected alternative, refuge lands would remain in their present management categories—about 564,300 acres (82.7 percent) in Minimal management, 116,600 acres (17.1 percent) in Moderate management, and 1,700 acres (less than one percent) in Intensive management. Along with the actions described under Alternative A, the Refuge would pursue additional management actions under Alternative B. The Refuge would work with the local community to seek formal recognition of Tok as a “Gateway Community” and to increase opportunities for environmental education, interpretation, and recreation off-Refuge and in support of or in conjunction with refuge programs. Opportunities for current and new public use would be promoted (canoe routes established and public outreach would encourage use of administrative cabins); additional public use facilities would be constructed, upgraded, or established (additional hiking trails and primitive campsites at Seaton Roadhouse and sanitary facilities-in conjunction with the Alaska Department of Transportation—at highway pullouts). The Refuge would upgrade or establish additional access (to promote day-use near the Alaska Highway, to increase season of use at Lakeview and Deadman Lake campgrounds, and to provide additional backcountry opportunities); and additional signing (for interpretive pullouts and

undeveloped trailheads and access points). There would continue to be no use of all-terrain vehicles authorized on the refuge.

The Refuge would continue to protect resources and property using a variety of fire management techniques including prescribed burning, suppression, thinning, and wildland fire use. The use of natural fire would be emphasized with prescribed burns based only on specific project objectives (e.g. fuels reduction, habitat protection, or fire effects research) and suppression to reduce potential for large-scale wildfires and to maintain long-term ecological health of refuge lands. Natural fire would be the primary tool to maintain and enhance habitat. Native fisheries would be managed to maintain self-sustaining, healthy populations to contribute to the natural diversity in the Upper Tanana Valley; any new reintroduction plans will be based on historic distribution.

Dated: October 10, 2008.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E8-25283 Filed 10-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-EA-2008-N0266]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Friday, November 7, 2008, from 8:30 a.m. to 3:30 p.m. (Eastern Time). Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Friday, October 24, 2008, per instructions under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hotel Monaco Alexandria, in the Athens Room, 480 King Street, Alexandria, VA; telephone (703) 549-6080.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103-AEA, Arlington, VA 22203; telephone (703) 358-2336; fax (703)

358-2548; or via e-mail at doug_hobbs@fws.gov.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting on Friday, November 7, 2008.

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at <http://www.fws.gov/sfbpc>.

The Council will convene to consider:

(1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic plan for its Fisheries Program; (2) the Council's work in addressing the issue of boating and fishing access; (3) methods for communicating programmatic issues of interest to incoming Department and Service personnel; (4) the Council's work to assess the Sport Fish Restoration Boating Access Program; (5) information pertaining to Sport Fish Restoration and Boating Trust Fund; (6) the Council's role in providing the Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program, authorized by the 1998 Sportfishing and Boating Safety Act, that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization; and (7) other Council business. The final agenda will be

posted on the Internet at <http://www.fws.gov/sfbpc>.

Procedures for Public Input: Interested members of the public may submit relevant written or oral information for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups requesting an oral presentation at the public Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail), by Friday, October 17, 2008, (see **FOR FURTHER INFORMATION CONTACT**) to be placed on the public speaker list for this meeting. Written statements must be received by Friday, October 24, 2008, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

In order to attend this meeting, you must register by close of business Friday, October 24, 2008. Please submit your name, time of arrival, e-mail address and phone number to Douglas Hobbs. Mr. Hobbs' e-mail address is doug_hobbs@fws.gov, and his phone number is (703) 358-2336.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS-3103-AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: October 2, 2008.

Kenneth Stansell,

Acting Director.

[FR Doc. E8-25266 Filed 10-22-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Class III Gaming Amendment taking effect.

SUMMARY: This publishes notice of an Amendment to a Compact between the Pokagon Band of Potawatomi Indians and the State of Michigan providing for the conduct of Tribal-State Class III gaming by the Pokagon Band of Potawatomi Indians taking effect.

DATES: *Effective Date:* October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment is entered into in connection with a unique set of circumstances resulting in our decision to neither approve nor disapprove the Amendment within the 45-day statutory time frame. This Amendment is in effect but only to the extent that it complies with the provisions of the Indian Gaming Regulatory Act.

Dated: October 14, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E8-25208 Filed 10-22-08; 8:45 am]

BILLING CODE 4310-4N-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-952-09-1420-BJ, 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of

Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, NV 89520, 775-861-6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on July 31, 2008:

The plat, in eleven sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, a portion of the Northern Line of the Sutro Tunnel Grant and portions of certain mineral surveys, and the subdivision of sections 20, 27 and 28, Township 17 North, Range 21 East, Mount Diablo Meridian, Nevada, under Group No. 736, was accepted July 29, 2008.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 5, 2008.

The plat, in five sheets, representing the dependent resurvey of portions of the south, east and north boundaries, a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 5, the subdivision of sections 2, 3, 4, 11, 12 and 13, the further subdivision of section 5, and a metes-and-bounds survey in section 5, Township 14 North, Range 27 East, Mount Diablo Meridian, Nevada, under Group No. 837, was accepted September 3, 2008.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 26, 2008.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel South, on the south boundary of Township 20 South, through a portion of Range 62 East; and the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 2, the further subdivision of section 2, and metes-and-bounds surveys in section 2, Township 21 South, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 843, was accepted September 25, 2008.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 30, 2008.

The plat, in seven sheets, representing the dependent resurvey of a portion of the Idaho-Nevada State Line, from mile post 104 to mile post 111, the south boundary, a portion of the east boundary, the west boundary, a portion of the subdivisional lines and the subdivision-of-section lines of certain sections, and the further subdivision of certain sections and a metes-and-bounds survey of lot 3 in section 26, Township 47 North, Range 52 East, Mount Diablo Meridian, Nevada, under Group No. 821, was accepted September 25, 2008.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 14, 2008.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. E8-25224 Filed 10-22-08; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Draft Environmental Impact Statement, Grand Canyon National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the Fire Management Plan, Grand Canyon National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Draft Environmental Impact Statement for the Fire Management Plan for Grand Canyon National Park, Arizona. The document describes and analyzes the environmental impacts of several action alternatives including the preferred alternative for management of fire in Grand Canyon National Park. The preferred alternative analyzes the use of prescribed fire, wildland fire use, suppression fire and manual and mechanical thinning. A no action alternative was also evaluated.

DATES: The National Park Service will accept comments on the Draft Environmental Impact Statement from

the public for 60 days after the date the Environmental Protection Agency publishes this Notice of Availability. Public meetings will occur at Kanab, Utah; Flagstaff and Tusayan, Arizona. Specific meeting locations and dates will be announced at a later time and available on the Web site identified below.

ADDRESSES: Information will be available for public review and comment online at <http://parkplanning.nps.gov/grca>, in the Office of the Superintendent, Steve Martin, P.O. Box 129, Grand Canyon, Arizona, 86023, 928-638-7945, or in the Office of Planning and Compliance, Mary Killeen, P.O. Box 129, Grand Canyon, Arizona, 86023, 928-638-7885.

FOR FURTHER INFORMATION CONTACT:

Chris Marks, Project Lead Fire Management Plan, P.O. Box 129, Grand Canyon, Arizona, 86023, 928-606-1050, Christopher_marks@nps.gov.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Office of the Superintendent, ATTN: FMP Comments, P.O. Box 129, Grand Canyon, Arizona 86023. You may also comment via the Internet at <http://parkplanning.nps.gov/grca>. Finally, you may hand deliver comments to Grand Canyon National Park at Park Headquarters, Office of Planning and Compliance, 1 Village Loop, Grand Canyon, Arizona 86023. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including 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: August 8, 2008.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8-24974 Filed 10-22-08; 8:45 am]

BILLING CODE 4312-ED-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029-0063

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form OSM-1 has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 24, 2008, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at OIRADocket@omb.eop.gov, or by facsimile to (202) 395-6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to jtrelease@osmre.gov. Please reference 1029-0063 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208-2783. You may also contact him at jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collections of information found at 30 CFR 870, Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form it implements, the OSM-1, Coal Reclamation Fee Report. OSM is requesting a 3-year term of approval for these information collection activities.

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 number for this collection of information is 1029-0063.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on July 30, 2008 (73 FR 44280). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting.

OMB Control Number: 1029-0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of Public Law 95-87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

Bureau Form Number: OSM-1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 10,748.

Total Annual Burden Hours: 1,643.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, email 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: October 15, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8-25123 Filed 10-22-08; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-648]

In the Matter of: Certain Semiconductor Integration Circuits Using Tungsten Metallization and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

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. 15) of the presiding administrative law judge ("ALJ") granting a motion to amend the complaint and the notice of investigation in the above-captioned investigation to add five respondents.

FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-2310. 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: The Commission instituted this investigation on May 21, 2008 based on a complaint filed on April 18, 2008 by LSI Corporation of Milpitas, California and Agere Systems Inc. of Allentown, Pennsylvania (collectively "complainants"). 73 FR 29534-35 (May 21, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuits using tungsten

metallization and products containing same by reason of infringement of claim 1 of U.S. Patent No. 5,227,335. The complaint named numerous respondents including NXP B.V. of the Netherlands and Micronas Semiconductor Holding AG ("Micronas AG") of Switzerland. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 2, 2008, the Commission issued notice of its determination not to review an ID granting the motion of complainants, NXP B.V., and proposed respondent NXP Semiconductors USA, Inc. ("NXP Semiconductors") of San Jose, California to amend the complaint and notice of investigation to substitute NXP Semiconductors for NXP B.V. 73 FR 52064-65 (Sept. 9, 2008). On October 8, 2008, the Commission issued notice of its determination not to review an ID granting motion of complainants, Micronas AG, and proposed respondent Micronas GmbH of Germany to amend the complaint and notice of investigation to substitute Micronas GmbH for Micronas AG. 73 FR 61168-69 (Oct. 15, 2008).

On May 30, 2008, complainants moved to amend the complaint to add five additional respondents: (1) Dongbu HiTek Semiconductor Business ("Dongbu") of Korea; (2) Jazz Semiconductor ("Jazz") of Newport Beach, California; (3) Magnachip Semiconductor of Korea; (4) Qimonda AG ("Qimonda") of Germany; and (5) Tower Semiconductor, Ltd. ("Tower") of Israel.

On September 18, 2008, the ALJ issued the subject ID (Order No. 15) granting the motion to amend to add the additional respondents. On September 26, 2008, Jazz petitioned for review of the ID. On September 29, 2008, Dongbu, Qimonda and Tower petitioned for review of the ID. On October 3 and 6, 2008, the Commission investigative attorney and complainants filed briefs in opposition to respondents' petitions.

The Commission has determined not to review the subject 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 in sections 210.14 and 210.42(c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c).

By order of the Commission.

Issued: October 17, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-25227 Filed 10-22-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 15, 2008, a proposed consent decree was lodged in *United States v. MidAmerican Energy Co. and Iowa-Illinois Manor, LLC*, Civil Action No. 08–416, in the United States District Court for the Southern District of Iowa.

The United States sought, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 & 9607, to recover costs incurred in response to releases of hazardous substances at the Iowa City Former Manufactured Gas Plant Superfund Site in Iowa City, Iowa ("the Site"), and to require the defendants, MidAmerican and Iowa-Illinois Manor, to perform EPA's selected remedy at the Site.

Under the terms of the proposed consent decree, MidAmerican and Iowa-Illinois Manor will perform the remedy for the Site as required in the proposed consent decree and pay \$429,300.64 to the Superfund in payment of the United States' unreimbursed response costs. In return, the United States will grant MidAmerican and Iowa-Illinois Manor a covenant not to sue under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendants MidAmerican and the Iowa Manor in *United States v. MidAmerican Energy Company and Iowa-Illinois Manor, LLC*, D.J. Ref. 90–11–3–09180. Public comments may be submitted by e-mail to the following e-mail address: pubcomment-ees.enrd@usdoj.gov.

The proposed consent decree may be examined at the Office of the United States Attorney, 110 East Court Avenue, Des Moines, IA 50309. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy may be obtained upon request from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$20.75 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–25236 Filed 10–22–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CIV Docket No. 109]

Civil Division; Radiation Exposure Compensation Act: Allowance for Costs and Expenses; Combination of Work Histories

AGENCY: Civil Division, Department of Justice.

ACTION: Notice.

SUMMARY: The Department of Justice ("the Department") is publishing this Notice to inform the public of two matters related to the adjudication of claims filed under the Radiation Exposure Compensation Act ("RECA" or "the Act"). First, in light of the Tenth Circuit Court decision in *Hackwell v. United States*, 491 F.3d 1229 (10th Cir. 2007), the Department will no longer enforce its regulation concerning attorney's fees whereby attorneys are prohibited from receiving reimbursement for expenses and costs above the statutory fee limits specified in the Act. The Notice further explains that the Department will not limit attorneys from receiving reimbursement for such expenses and costs from their clients, even when a claim is unsuccessful. Finally, the Department intends to initiate a rulemaking to strike the existing regulation at § 79.74(b) and revise the language, consistent with the Court's decision and this policy statement.

Second, the Department has an ongoing policy of combining uranium industry work histories, consistent with the plain language of the Act. By statute, to be eligible for compensation as a result of exposure to radiation due to employment in the uranium production industry, a claimant must demonstrate that he or she was, for at least one year, employed in a uranium mine, employed in a uranium mill, or employed in the transportation of uranium ore or vanadium-uranium ore. This Notice articulates the Department's policy that,

assuming all other eligibility criteria are satisfied, claimants may satisfy this one-year statutory requirement by combining different periods of employment in uranium mining, uranium milling, and ore transporting.

DATES: This notice is effective on October 23, 2008.

FOR FURTHER INFORMATION CONTACT:

Gerard W. Fischer (Assistant Director), 202–616–4090 or Dianne S. Spellberg (Senior Counsel), 202–616–4129, Constitutional and Specialized Tort Litigation Section, Torts Branch, Civil Division.

SUPPLEMENTARY INFORMATION:**Background**

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act. *See also* Claims Under the Radiation Exposure Compensation Act, 28 CFR 79 (2006). The Act offers an apology and monetary compensation to individuals (or their survivors) who have contracted certain cancers and other serious diseases following exposure to radiation released during above-ground atmospheric nuclear weapons tests or following their employment in the uranium production industry during specified periods. On July 10, 2000, the RECA Amendments of 2000 were enacted, providing expanded coverage to individuals who developed one of the compensable diseases in the Act, adding two new claimant categories (uranium millers and ore transporters), and lowering the amount of attorney's fees from 10% of the lump sum compensation award to 2% of the award in connection with the filing of an initial claim.

This unique program was designed as an alternative to litigation in that the statutory criteria do not require claimants to establish causation. Rather, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or residing in a designated location for a specific period of time, he or she qualifies for compensation. Congress charged the Attorney General with responsibility for adjudicating claims under the Act. The Attorney General delegated this function to the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice.

I. Attorney's Fees and Costs

On July 10, 2000, Congress amended RECA by lowering the permissible fee limitation for attorneys from 10% to 2% of the compensation award, in

connection with the filing of an initial claim. Pursuant to the law, claimants who were previously denied compensation may re-file their claim up to three times. In cases where a claim has been re-filed, Congress directed that attorneys may receive 10% of the compensation award. Specifically, section 9 of RECA, titled "Attorney Fees," provides:

(a) General Rule. Notwithstanding any contract, the representative of an individual may not receive, for *services rendered* in connection with the claim of an individual under this Act, more than that percentage specified in subsection (b) of a payment made under this Act on such claim.

(b) Applicable Percentage Limitations. The percentage referred to in subsection (a) is—

(1) 2 percent for the filing of an initial claim; and

(2) 10 percent with respect to—

(A) any claim with respect to which a representative has made a contract for services before the date of the enactment of the Radiation Exposure Compensation Act Amendments of 2000; or

(B) a resubmission of a denied claim.

(c) Penalty. Any such representative who violates this section shall be fined not more than \$5,000.

Source: 42 U.S.C. 2210 note (2006), Sec. 9 (emphasis added).

In its implementation of the amendments, the Department determined that costs and expenses, which primarily involved obtaining medical tests and purchasing and transmitting copies of documents required for RECA claims, were included within the meaning of "services rendered in connection with the claim of an individual under this Act." Accordingly, the Department promulgated regulations consistent with this interpretation of the statutory language.

On March 23, 2004, the Department published a final rulemaking to implement the "2000 Amendments." See 28 CFR 79 (2006). The regulation at § 79.74(b) states:

(b) Fees.

(1) Notwithstanding any contract, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may not receive from a claimant or beneficiary any fee for services rendered, *including costs incurred, in connection with an unsuccessful claim.*

(2) Notwithstanding any contract and except as provided in paragraph (b)(3) of this section, the attorney of a claimant or beneficiary, along with any assistants

or experts retained by the attorney on behalf of the claimant or beneficiary, may receive from a claimant or beneficiary no more than 2% of the total award for all services rendered, *including costs incurred, in connection with a successful claim.*

(3)(i) If an attorney entered into a contract with the claimant or beneficiary for services before July 10, 2000, with respect to a particular claim, then that attorney may receive up to 10% of the total award for services rendered, *including costs incurred, in connection with a successful claim.*

(ii) If an attorney resubmits a previously denied claim, then that attorney may receive up to 10% of the total award to the claimant or beneficiary for services rendered, *including costs incurred, in connection with that subsequently successful claim.* Resubmission of a previously denied claim includes only those claims that were previously denied and refiled under the Act.

(4) Any violation of paragraph (b) of this section shall result in a fine of not more than \$5,000.

Id. (emphasis added).

The Department, in adopting a regulation that included costs and expenses within the interpretation of the fee limitation for attorneys, sought to comply with the congressional intent in amending RECA as a whole.

The Hackwell Litigation

On April 21, 2004, the plaintiff alleged that her co-plaintiff, a law firm, had refused to represent her because of the Department's regulation, 28 CFR 79.74(b), that limits attorney compensation for representation of claimants seeking to file a claim under RECA. The plaintiffs challenged the regulation as contrary to the RECA statute, an invalid preemption of state law, and a violation of the Fifth and Tenth Amendments. The district court dismissed the suit for failure to state a claim, holding that the regulation was a "reasonable interpretation" of the statute and that the Department "did not exceed its statutory authority in implementing Congress's compensation limitation." *Hackwell, et al v. United States, et al.*, Civil Action No. 04-cv-00827-EWN (D. Colo. Sept. 28, 2005).

On appeal, the Tenth Circuit held that the plain meaning of "services rendered" revealed Congress's unambiguous intent to exclude "costs incurred" from the attorney fee limitation and invalidated 28 CFR 79.74(b) as "contrary to the RECA's plain language." *Hackwell*, 491 F.3d at 1241. The case was remanded to the district court for further proceedings.

On remand, plaintiffs sought an injunction against enforcement of the regulation, which defendants opposed. In its July 23, 2008 remand decision, the district court granted the injunction and directed that attorneys may recover expenses and costs from their clients even in regard to claims under the Act that are unsuccessful.

Statement of Policy

In light of the decision in *Hackwell*, the Department will not enforce its regulatory provision, 28 CFR 79.74(b), prohibiting attorneys from receiving reimbursement for expenses and costs from their clients in connection with claims filed under the Radiation Exposure Compensation Act, in addition to the statutory attorney's fee. Moreover, attorneys may collect expenses and costs regardless of whether a claim is approved or denied. Finally, the Department intends to initiate a rulemaking to strike the existing regulation at 28 CFR 79.74(b) and revise the language, consistent with the Court's decision in *Hackwell* and this policy statement.

II. Combination of Employment for Uranium Worker Claimants

The Department has been requested to publish its longstanding policy regarding the combination of different types of employment—mining, milling, and ore transporting—to satisfy the Act's statutory one-year duration of employment requirement.

The Act provides compensation to individuals exposed to radiation released during above-ground atmospheric nuclear weapons tests or to individuals exposed to radiation as a result of their employment in the uranium production industry. With respect to individuals employed in the uranium production industry, the Act specifically provides compensation for: (1) Individuals either exposed to 40 or more working level months of radiation while employed in a uranium mine or employed for at least one year in a uranium mine ("miners"); (2) individuals employed for at least one year in a uranium mill ("millers"); or (3) individuals employed for at least one year in the transport of uranium ore or vanadium-uranium ore from such a mine or mill ("ore transporters").

To be eligible for compensation under the Act as a miner, miller, or ore transporter, the claimant must have been employed in that position at any time during the period January 1, 1942 to December 31, 1971. Additionally, the claimant must have been employed as a miner, miller, or ore transporter in Colorado, New Mexico, Arizona,

Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Finally, all three categories of uranium workers must have been diagnosed with a compensable disease. For all three categories of uranium workers (miners, millers, and ore transporters), the Act specifies the following six compensable diseases: Primary cancer of the lung, fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis. In addition to those compensable diseases applicable to all three categories of uranium workers, the Act specifies the following two additional compensable diseases for claimants who were employed as millers and ore transporters (but not as miners): Primary renal cancer and chronic renal disease including nephritis and kidney tubal tissue injury.

Statement of Policy

The issue has been raised whether claimants can combine periods of employment as a miner, miller, and ore transporter. In order to be eligible for compensation, the Act requires claimants to have been employed for one year as a miner, miller, or ore transporter. In some instances, a claimant may have worked in separate positions as a miner, miller, or ore transporter for less than one year, but the claimant's total, cumulative period of employment in these positions exceeds one year. The question is whether the Act's eligibility criteria may be satisfied by such a combination of periods of employment.

The Department is publishing this Notice to articulate its policy that claimants can combine periods of employment as miners, millers, and ore transporters to meet the one-year requirement. For all three categories of uranium workers (mining, milling, and ore transporting), the Act specifies six common diseases: Primary cancer of the lung, fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis. Therefore, in cases involving those six illnesses, the Act's exposure criteria can be satisfied by combining periods of employment that include mining, milling, and ore transporting. For millers and ore transporters (but not miners), the Act specifies two additional compensable diseases: Primary renal cancer and chronic renal disease including nephritis and kidney tubal tissue injury. In cases involving those two illnesses, the Act's exposure criteria can be satisfied by combining periods of

employment that include only milling and ore transporting.

This Notice is intended to inform the public of the Department's longstanding policy regarding the calculation of the referenced employment periods. In addition, the Department will continue to announce this policy at outreach events and in communications with claimants, counsel, and support groups.

Dated: October 14, 2008.

Gregory G. Katsas,

Assistant Attorney General, Civil Division.

[FR Doc. E8-25230 Filed 10-22-08; 8:45 am]

BILLING CODE 4410-12-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 10, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number) / e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316 / Fax: 202-395-6974 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Vinyl Chloride Standard (29 CFR 1910.1017).

OMB Control Number: 1218-0010.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 32.

Estimated Total Annual Burden Hours: 712.

Estimated Total Annual Costs Burden: \$48,928.

Description: The purpose of the Department's Vinyl Chloride Standard at 29 CFR 1910.1017 and the information collection requirements contained therein is to provide protection for employees from the adverse effects associated with occupational exposure to vinyl chloride. Employers must monitor employee exposure, reduce employee exposure to within permissible exposure limits, and provide medical examinations and other information to employees exposed to vinyl chloride. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at 73 FR 39050 on July 8, 2008. PRA documentation prepared in association with the preclearance notice is available on <http://www.regulations.gov> under docket number OSHA 2008-0021.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Cotton Dust (29 CFR 1910.1043).

OMB Control Number: 1218-0061.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 384.

Estimated Total Annual Burden Hours: 35,742.

Estimated Total Annual Costs Burden: \$3,519,494.

Description: The purpose of the Department's Cotton Dust Standard at 29 CFR 1910.1043 and the information collection requirements contained therein is to provide protection for employees from the adverse health effects associated with occupational exposure to cotton dust. Employers must monitor employee exposure, reduce employee exposure to within permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure monitoring and medical records. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at 73 FR 44774 on July 31, 2008. PRA documentation prepared in association with the preclearance notice is available on <http://www.regulations.gov> under docket number OSHA 2008-0015.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Acrylonitrile (29 CFR 1910.1045).

OMB Control Number: 1218-0126.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 23.

Estimated Total Annual Burden Hours: 3,166.

Estimated Total Annual Costs Burden: \$180,946.

Description: The Department's Acrylonitrile Standard at 29 CFR 1910.1045 requires employers to monitor employee exposure to acrylonitrile (AN), to provide medical surveillance, to train employees about the hazards of AN, and to establish and maintain accurate records of employee exposure to AN. These records will be used by employers, employees, physicians, and the Government to ensure that employees are not harmed by exposure to AN. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at 73 FR 37987 on July 2, 2008. PRA documentation prepared in association with the preclearance notice is available on <http://www.regulations.gov> under docket number OSHA 2008-0014.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177).

OMB Control Number: 1218-0219.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Costs Burden: \$0.

Description: The purpose of the Department's Standard for Servicing Multi-Piece and Single Piece Rim Wheels at 29 CFR 1910.177 and the information collection requirements contained therein is to reduce employees' risk of death or serious injury by ensuring that restraining devices used by them during the servicing of multi-piece rim wheels are in safe operating condition. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at 73 FR 45250 on August 4, 2008. PRA documentation prepared in association with the preclearance notice is available on <http://www.regulations.gov> under docket number OSHA 2008-0025.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Shipyard Employment Standards (29 CFR 1915.113(b)(1) and 1915.172(d)).

OMB Control Number: 1218-0220.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 639.

Estimated Total Annual Burden Hours: 3,137.

Estimated Total Annual Costs Burden: \$0.

Description: The Department's Standard for shackles and hooks (29 CFR 1915.113(b)(1)) requires that all hooks for which no applicable manufacturer's recommendations are available be tested and that the employer retain a certification record. The Department's Standard on portable air receivers (29 CFR 1915.172(d)) requires that portable, unfired pressure vessels be examined quarterly and subjected to a yearly hydrostatic pressure test and that a certification record be maintained. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at 73 FR 44775 on July 31, 2008. PRA documentation prepared in association with the preclearance notice is available on <http://www.regulations.gov> under docket number OSHA 2008-0024.

www.regulations.gov under docket number OSHA 2008-0024.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8-25217 Filed 10-22-08; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 15, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Amy Hobby on 202-693-4553 (this is not a toll-free number)/e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Applicant Background Questionnaire.

OMB Control Number: 1225-0072.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 20,500.

Total Estimated Annual Burden Hours: 1,608.

Description: The Applicant Background Questionnaire, which is completed voluntarily by job applicants, provides information on the applicants' gender, race or ethnicity, disability, and the applicants' source of recruitment information for vacancy. This data will be used to evaluate the effectiveness of various recruitment methods to tailor recruitment to meet equal employment opportunity objectives. For additional information, see related notice published at 73 FR 43476 on July 25, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8-25247 Filed 10-22-08; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 17, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Mary Beth Smith-Toomey on 202-693-4223 (this is not a toll-free number) / e-mail DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Dept of Labor—Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316 / Fax: 202-395-6974 (these are not toll-free numbers), E-mail:

OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of an existing OMB Control Number.

Title of Collection: Project Gate.

OMB Control Number: 1205-0444.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 2,431.

Total Estimated Annual Burden Hours: 1,216.

Total Estimated Annual Costs Burden: \$0.

Description: Project GATE is a demonstration program designed to assist individuals interested in self-employment to develop their businesses. To determine whether the program should be replicated on a larger scale, an evaluation has been conducted and is in its final stage. OMB approved an additional survey of 400 individuals (Wave II), which was completed early in 2007. However, the analysis of Wave II data did not indicate anticipated improved earnings; therefore, ETA is requesting to conduct an identical 5-

year follow-up with 2,431 Project GATE program completers to enable ETA to determine whether this finding persists over time.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8-25249 Filed 10-22-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D-11471]

Notice of Proposed Amendment; Prohibited Transaction Exemption (PTE) 99-34 Involving the Chase Manhattan Bank/JPMorgan Chase Bank, National Association

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption, which, if granted, would amend PTE 99-34 (64 FR 46419, August 25, 1999), an exemption granted to The Chase Manhattan Bank (CMB). PTE 99-34 permits the lending of securities to affiliates of The Chase Manhattan Corporation (CMC) by employee benefit plans, including commingled investment funds holding plan assets for which CMC affiliates act as directed trustee or custodian and securities lending agent or subagent, and the receipt of compensation in connection with the transactions. The amendment, if granted, would apply to JPMorgan Chase Bank, National Association (JPMCB), a successor organization to CMB, and would extend the provisions of PTE 99-34 to certain transactions with affiliates of the Bear Stearns Companies Inc. (Bear Stearns). If granted, the proposed amendment would affect participants and beneficiaries and fiduciaries of employee benefit plans to which affiliates of JPMCB act as securities lending agent or sub-agent and may also act as custodian or directed trustee.

DATES: *Effective Date:* Except as otherwise specified herein, the amendment, if granted, will be effective as of August 25, 1999.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department December 8, 2008.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemptions Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Application No. D-11471. Alternatively, interested persons are invited to submit comments or hearing requests to the Department by e-mail to moffitt.betty@dol.gov or by facsimile at (202) 219-0204.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend PTE 99-34, originally granted to CMB. CMB merged in November 2001 with Morgan Guaranty Trust Company of New York to form JPMCB (together with its affiliates, the Applicant). This followed the December 31, 2000 merger of CMB's parent company, CMC, with JPMorgan & Co. Incorporated, to form JPMorgan Chase & Co. (JPMCC).

This amendment, if granted, will be granted to JPMCB, as successor organization to CMB. As part of the amendment, the names of other related corporate entities that were changed due to the merger will be updated. For the sake of simplicity, the current names of those entities will be used in the textual discussion of the existing provisions of PTE 99-34.

PTE 99-34 conditionally permits (1) the lending of securities to affiliates of JPMCC which are engaged in JPMCC's capital markets line of business (referred to herein as Global Capital Markets), by employee benefit plans, including commingled investment funds holding Client Plan assets, for which JPMCC, through its Investor Services line of business, as operated through JPMCB and its affiliates (Investor Services), acts as directed trustee or custodian, and for which JPMCC through its Financing & Market Products or any other similar division of JPMCB or a U.S. affiliate of JPMCB (collectively, FMP) acts as securities lending agent or sub-agent and (2) the receipt of compensation by FMP in connection with the proposed transactions.

The Department is proposing this amendment to PTE 99-34 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 693-8554. This is not a toll-free number.

Summary of Facts and Representations:

1. JPMCB is a national banking association with its principal place of business in Columbus, Ohio, that is regulated by the Office of the Comptroller of the Currency. Among its other business activities, JPMCB acts as trustee and custodian of employee benefit plans that are subject to ERISA, and of collective investment funds that serve as investment vehicles for ERISA plan assets. JPMCB is a wholly-owned subsidiary of JPMCC, a financial holding company incorporated under Delaware law and headquartered in New York, New York. JPMCC is one of the largest banking institutions in the United States, with \$1.6 trillion in assets, \$123 billion in stockholders' equity and operations worldwide as of December 31, 2007.

2. On March 16, 2008, JPMCC and Bear Stearns entered into an Agreement and Plan of Merger, which was subsequently amended as of March 24, 2008 (the Merger Agreement). The Merger Agreement provided that, upon the terms and subject to the conditions set forth in the Merger Agreement, a newly-formed wholly-owned JPMCC subsidiary would merge with and into Bear Stearns, with Bear Stearns continuing as the surviving corporation and as a wholly-owned subsidiary of JPMCC (the Merger). The holders of Bear Stearns common stock approved and adopted the Merger Agreement at a special meeting of stockholders held on May 29, 2008. Following the satisfaction or waiver of the other conditions in the Merger Agreement, the Merger became effective on May 30, 2008.

3. Pursuant to Section 5.1 of the Merger Agreement, prior to the effective time of the Merger, each of JPMCC and Bear Stearns were required, among other things, to use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships. In furtherance of the foregoing, Bear Stearns agreed to operate within its existing credit, principal, market and other risk limits and comply with existing risk-related policies and procedures. JPMCC had the right to oversee Bear Stearns in the setting of such limits in any and all respects, and

in connection with changes in any of the foregoing policies and procedures. During such period, JPMCC had custody of and the immediate right to manage the collateral pool (valued at \$30 billion as of March 14, 2008) that was being pledged as security for \$29 billion in term financing from the Federal Reserve Bank of New York to facilitate the Merger, and related hedges. Subject to the continued effectiveness of the Guaranty (as defined below) and JPMCC's compliance with the terms thereof, JPMCC was entitled to oversee the business, operations and management of Bear Stearns in its reasonable discretion. Bear Stearns also agreed to refrain from taking certain actions without JPMCC's consent.

4. On March 24, 2008, JPMCC, in connection with the amendment to the Merger Agreement, entered into an amended and restated guaranty agreement (the Guaranty), effective retroactively from March 16, 2008, which replaced the guaranty agreement entered into on March 16, 2008, in connection with the Merger Agreement. Pursuant to the Guaranty, JPMCC agreed to guarantee certain credit and trading liabilities of Bear Stearns and certain of its operating subsidiaries to the extent such liabilities arise prior to the end of the specified "Guaranty Period" which terminates 120 days after the closing of the Merger on May 30, 2008.

5. In addition, on March 24, 2008, Bear Stearns and JPMCC, in connection with entering into the amendment to the Merger Agreement, entered into a share exchange agreement, under which JPMCC agreed to purchase 95 million newly issued shares of Bear Stearns' common stock, or 39.5% of the outstanding shares of Bear Stearns' common stock after giving effect to the issuance, in exchange for the issuance of 20,665,350 shares of JPMCC common stock to Bear Stearns and the entry by JPMCC into the amendment to the Merger Agreement described above, an amended and restated Guaranty as described above and a guaranty in favor of the New York Federal Reserve. The share exchange was completed on April 8, 2008, following which JPMCC beneficially owned approximately 47.41% of the outstanding shares of the common stock of Bear Stearns (as reported in JPMCC's Amendment No. 2 to its Schedule 13D filed with the SEC on April 9, 2008).

Securities Lending Transactions

6. JPMCB represents that it is a provider of securities lending services to pension plans and other institutional investors, performing this service as an adjunct to its directed trustee and

¹ Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. at 214 [2000 ed.]) generally transferred the authority of the Secretary of the

Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

custody services or under a separate relationship unrelated to its custody business. The purpose of securities lending is to obtain an additional return on a plan's investments by lending out the securities held by the plan to broker-dealers that require them, for example, to cover short sales or trade settlements. JPMCB offers a limited "indemnified" program, whereby if the borrower defaults with insufficient collateral, JPMCB is obligated to make good the deficiency, thereby limiting customer risk. Borrowers provide collateral for the securities loan in the form of securities or cash.

7. Affiliates of Bear Stearns are major borrowers in JPMCB's securities lending program, with approximately \$10 billion in securities loans outstanding as of the last business day before the Merger Agreement was signed (as applicable to both ERISA and non-ERISA accounts). The specific Bear Stearns affiliates with which JPMCB entered into securities loan arrangements are Bear Stearns Securities Corp. (as assignee under an agreement with Bear Stearns & Company Inc.), Bear Stearns International Limited (UK) and Bear Stearns International Trading Limited (UK). They are collectively referred to herein as the "Bear Stearns Borrowers."

8. JPMCB's securities lending agreements with its client employee benefit plans authorize JPMCB, as securities lending agent for the plan, to loan securities to various borrowers on behalf of the plans. A list of approved borrowers is appended to the securities lending agreements, and may be updated by JPMCB to add new borrowers upon notice to the plan, subject to the plan's right to object within five business days to a potential borrower. Therefore, under the terms of their securities lending agreements, the plans that currently have securities loans outstanding to Bear Stearns Borrowers, and that would therefore be subject to the relief requested by Applicants, have previously approved such Bear Stearns Borrowers as borrowers. Prior to March 16, 2008, any such loans to the Bear Stearns Borrowers were typically made in reliance on Prohibited Transaction Exemption 2006-16 (PTE 2006-16), 71 FR 63786 (Oct. 31, 2006), because Bear Stearns, as a leading brokerage firm, is likely to be a party in interest to any large pension plan.

9. The execution of the Merger Agreement and related documents on March 16, 2008, raised potential prohibited transaction issues in the Applicants' view. As soon as it became evident that the merger transaction was

to proceed and JPMCC realized that prohibited transaction issues would be raised as a result, JPMCC contacted the Department and worked with the Department to determine how best to address these issues.

While the Merger did not become effective until May 30, 2008, the Applicant is concerned that JPMCC may be viewed as having "controlled" Bear Stearns prior to that date by reason of the control JPMCC was able to exercise over Bear Stearns under the provisions of the Merger Agreement and the Guaranty Agreement, which may have caused its subsidiary JPMCB and the Bear Stearns Borrowers to be treated as "affiliates" of each other.

10. PTE 2006-16 does not provide relief for securities lending transactions from the prohibitions of section 406(b) of ERISA, which, in the Applicants' view could be violated where the securities lending agent, acting as a fiduciary on behalf of the plan in making securities loans, is affiliated with the securities borrower. One of JPMCB's predecessor entities, CMB, applied for exemptive relief to be able to enter into securities loans with its affiliated broker-dealers, which was granted as PTE 99-34. Among the conditions of the exemption are that (i) JPMCC and its affiliates may not have or exercise discretionary or control or render investment advice with respect to the investment of the assets involved in the transaction; (ii) the securities lending arrangement be approved in advance by an independent fiduciary; (iii) the securities loan be at market rates and on terms at least as favorable as arm's-length terms; (iv) the most recent available audited and unaudited statements of financial condition of the client plans' borrowers be received by JPMCB and provided to the plans before entering into the loan agreements with those borrowers; (v) minimum collateral requirements be met; (vi) the client plan be indemnified against loss; and (vii) certain indicia of ownership in the United States be maintained. Only client plans with at least \$50 million in assets are permitted to participate, with a special rule applicable to master trusts and commingled funds.

11. Given the unexpected timing of the Merger Agreement, JPMCB was not able to meet all the requirements of PTE 99-34 necessary to cover loans to the Bear Stearns Borrowers prior to the Merger Agreement date. Specifically, it had not provided advance disclosure of the most recent available audited and unaudited statements of financial condition for the Bear Stearns Borrowers to Client Plans, nor was it able to satisfy PTE 99-34's advance

approval condition. Therefore, JPMCB is seeking to amend PTE 99-34 to permit these conditions to be met retroactively for securities loans to the Bear Stearns Borrowers. The Applicants represent that, if the existing securities loans between JPMCB as securities lending agent for ERISA plans and Bear Stearns Borrowers were terminated, the result would be disruptive to the plans and to the securities lending market.

12. Upon consideration of the facts and representations, the Department proposes to amend PTE 99-34 effective March 16, 2008, to permit securities lending by client plans to Bear Stearns Borrowers by JPMCC's Financing & Market Products line of business (FMP) as securities lending agent or sub-agent, and the receipt by FMP of compensation in connection therewith for the period from March 16, 2008, through April 15, 2008: (1) FMP provided the most recently available audited and unaudited financial statements of Bear Stearns Borrowers' parent company to client plans, and (2) FMP furnished a description of the general terms of the securities loan agreements between such client plans and the Bear Stearns Borrowers in the form of copies of the standard forms of those agreements (FMP negotiates the specific terms of such agreements). The cover letter accompanying this disclosure package notified the independent fiduciaries of the client plans of their right to object to the extension of securities loans to the Bear Stearns Borrowers, and that if the client plan objected, FMP (1) would cease making new loans to the Bear Stearns Borrowers immediately, and (2) would work with the client plan to determine how to unwind existing loans to Bear Stearns Borrowers expeditiously. Absent an objection within ten days of the notice, FMP would treat the client plan as consenting to the continuation of securities loans to Bear Stearns Borrowers. In the event of an objection, loans on behalf of the objecting client plan that are continuing or new loans entered into after March 16, 2008 but prior to the objection, up to the date the loans are unwound in a manner approved by the client plan, will still be treated as covered by PTE 99-34, as amended.

13. Additionally, Applicants state that neither PTE 2006-16 nor PTE 99-34 permits the lending of securities of a plan to an affiliate of the manager of the plan's portfolio of which those securities are a part. Prior to the date of the Merger Agreement, this condition would not have prevented JPMCB from lending securities managed by a JPMCB

affiliate to a Bear Stearns Borrower. Following the Merger Agreement, however, the JPMCB asset managers may be considered affiliated with the Bear Stearns Borrowers. As a result, Applicants are concerned that relief under the exemptions would cease to be available for loans of such securities to those borrowers.

14. In response, the Department has determined to propose an amendment to PTE 99–34 under which the condition in section II(b) of PTE 99–34, that the securities loaned to a borrower not be subject to the discretionary authority or control of an affiliate of the borrower, will not be imposed with respect to the lending of securities by a client plan to a Bear Stearns Borrower for the 90-day period from March 16, 2008, through June 14, 2008.

15. This temporary relief would be subject to the condition that information as to whether a particular security is on loan to a Bear Stearns Borrower will not be available to a JPMCB-affiliated manager. FMP has assured compliance with this condition by blocking the reporting of securities lending transactions for client plans of JPMCB's asset management affiliate through VIEWS, an electronic reporting facility, so that JPMCB's affiliate will not have access to information regarding the identity of the borrowers of securities that are out on loan. Similarly, the Client Service and Operations teams will not be permitted to provide such information through other media or orally to the JPMCB affiliate.

16. Additionally, JPMCB has agreed to retain an Independent Fiduciary to review loans of securities that would otherwise not be permitted by section II(b) of PTE 99–34. The term "Independent Fiduciary" will be defined in section IV(f) of the exemption. The Independent Fiduciary will conduct a Review (as defined in section IV(f) of the exemption) of a representative sample of transactions for compliance with the following: (1) Whether allocation of the opportunity to lend securities by the applicable client plan account was in accordance with JPMCB's internal securities loan allocation procedures; (2) Whether the loan of securities by the client plan to Global Capital Markets was at market rates and terms which were at least as favorable to such client plan as if made at the same time and under the same circumstances to an unrelated party (as required by section II(d) of the exemption); (3) Whether with respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of

Client Plans by FMP, in the aggregate, were to unrelated borrowers (as required by section II(q) of the exemption); and (4) Whether investment by the applicable client plan in the underlying securities that were loaned was consistent with the investment guidelines for the particular client plan account. The Independent Fiduciary will issue a written report presenting its specific findings within 180 days of the date of publication of this proposed amendment in the **Federal Register**.

17. The relief under the amendment would be limited to securities loans to "Bear Stearns Affiliates," defined as The Bear Stearns Companies Inc. and its affiliates as constituted on March 15, 2008, the day before the Merger Agreement was entered into. This definition will prevent the special relief from being available for securities loans to JPMCB affiliates other than those that may be treated as affiliated as a result of the Merger Agreement with Bear Stearns.

Investment of Cash Collateral

18. As an additional service to employee benefit plans, JPMCB will invest cash collateral received from borrowing broker dealers. Collateral for securities loans generally can take the form of either securities or cash. If the collateral is in the form of securities, the borrower pays the lending plan a fee for the loan. If the collateral is in the form of cash, then the securities lending agreement authorizes JPMCB to invest and reinvest the cash collateral in accordance with investment guidelines appended to the agreement, and the compensation to the plan for the loan is based on the return that JPMCB is able to obtain on the investment of the cash.

19. The return on cash collateral is typically divided into three parts. A certain target return (a fixed rate such as 5% or a variable rate such as the Fed Funds rate, as negotiated between the securities lending agent and the borrower) is paid over to the borrower, and then the lending plan and JPMCB divide the remainder in an agreed-upon ratio, such as 80% to the plan and 20% to JPMCB. JPMCB's share serves as its compensation for providing the securities lending services. JPMCB also may invest cash collateral through collective investment funds, to achieve the benefit of increased diversification.

20. The permitted investments for securities lending cash collateral depend on what is approved by the client as part of the collateral investment guidelines. Some more conservative clients limit the permitted investments to U.S. Government securities. Others, seeking a higher

return, permit investments such as commercial paper and repurchase agreements. A more aggressive approach would permit medium term notes and corporate bonds. A factor in this decision is whether the investor will have a frequent need to pull back securities from loans, in which case the associated collateral must be returned to the borrower unless it can be used to collateralize another loan. Those investors with higher need for liquidity or higher turnover would authorize shorter-term and less risky investments, while those with a longer time horizon and less turnover—often the case for employee benefit pension plans—would authorize longer-term and higher-risk investments.

21. As of March 14, 2008, the last business day before the JPMCC-Bear Stearns merger agreement, approximately \$1.1 billion of the cash collateral holdings for JPMCB ERISA securities lending accounts was invested in secured and unsecured notes of Bear Stearns subsidiaries, as well as repurchase agreements with those firms. Many of these investments were issued under a master note that permitted JPMCB to exercise a put right to require Bear Stearns to redeem the note. JPMCB exercised that put right prior to the date of the Merger Agreement, so that the investments under the master note matured and were redeemed on June 13, 2008. The medium term notes will mature in July and December of 2008, and March and July of 2009 (collectively, Medium Term Notes). The repurchase agreements were generally overnight and have by now matured.

22. JPMCB requests relief for investment of client plan assets in a \$750 million advance paid to certain subsidiaries of The Bear Stearns Companies, Inc. The advance was made pursuant to the Master Note Agreement dated February 9, 2007 by and between JPMCB as agent for a group of lending entities and The Bear Stearns Companies Inc. subsidiaries (Master Note), which matured on June 13, 2008. The obligation was jointly held by several securities lending accounts, including both ERISA plans and commingled funds and non-ERISA investors. Of the \$750 million total, 10.13% was allocated to ERISA investors. As a condition of the exemption, JPMCB agreed to unconditionally guarantee repayment of the advance.

The Department proposes to amend PTE 99–34 to temporarily permit the investment of client plan assets in the Master Note. A new Section III will be inserted and will replace the existing

Section III. The Definitions section will be redesignated as Section IV.

23. With respect to the Medium Term Notes, the Applicants represent that there are four sets of notes, as follows: (1) Notes in the amount of \$279.5 million with a maturity date of July 14, 2008; (2) notes in the amount of \$534 million with a maturity date of December 4, 2008; (3) notes in the amount of \$720 million with a maturity date of March 23, 2009; and (4) notes in the amount of \$100 million with a maturity date of July 16, 2009. Applicants state that the amounts represent the totals of each particular bond issue held by JPMCB for securities lending cash collateral accounts, and the amounts specifically allocable to ERISA plans are less than the entire amounts.

24. Applicants represent that the Medium Term Notes are publicly-traded Series B medium-term notes issued by The Bear Stearns Companies Inc. in 2006 and 2007. All are floating rate notes, with the floating rate based either on the Federal Funds Open Rate (in the case of the first three) or LIBOR (in the case of the last one). None of the Medium Term Notes provide an option for early redemption by the holder or an option for the holder to extend the maturity date. The principal terms of the notes can be changed only by the issuer, and then only with the consent of two-thirds of the holders, or in some instances, only with the consent of all the holders. The applicant represents that while there currently is a market for the Medium Term Notes, they are trading at a discount.

25. The investment by plans in the Medium Term Notes may represent transactions with a party in interest, as Bear Stearns entities are service providers to many plans through their brokerage activities. Prior to the Merger Agreement, Applicants relied on PTE 84-14² and PTE 91-38³ for relief from section 406(a) of ERISA with respect to these transactions. PTE 84-14 and PTE 91-38 are class exemptions that provide relief for a range of transactions between plans and parties in interest, provided that the assets are managed, respectively, by a "qualified professional asset manager," or as part of a bank collective investment fund. Due to the Merger, however, Applicants are not currently able to meet a condition present in each of the exemptions, that the transactions not occur with a party "related to" the QPAM or an "affiliate" of the sponsoring bank. The Applicants' view

is that regardless of their current inability to meet a condition of the class exemptions, relief for any prohibited transaction that would arise under section 406(a) of ERISA should continue to be available, pursuant to section V(i) of PTE 84-14 and section IV(h) of PTE 91-38, the "continuing transactions" provisions of the exemptions. These conditions clarify the application of the exemptions to continuing transactions, and generally provide that if the requirements of the respective class exemptions are satisfied at the time a transaction is entered into or renewed, or would have become prohibited but for that exemption, they will continue to be satisfied thereafter with respect to the transaction. The Department concurs with Applicants' analysis that relief under section 406(a) of ERISA would continue to be available under the exemptions with respect to the public-traded Medium Term Notes.

26. The Department has previously cautioned with respect to section V(i) of PTE 84-14, "that, although Part I may continue to be available for the entire term of a continuing transaction which subsequently fails to satisfy one or more of the conditions of that Part, no relief would be provided for an act of self-dealing described in section 406(b)(1) of ERISA if the QPAM has an interest in the person which may affect the exercise of its best judgment as a fiduciary."⁴ The Department urged fiduciaries to take appropriate steps to avoid engaging in 406(b) violations should circumstances change during the course of a continuing transaction. In this regard, Applicants represent that the terms of the Medium Term Notes are fixed from the standpoint of the investors and do not allow for any renegotiation or early redemption. Accordingly, it is the Applicants' position that no 406(b) violation will occur with respect to the Medium Term Notes because there is no opportunity for discretionary action on the part of the responsible fiduciary.

JPMCC as Custodian or Directed Trustee

The Applicant notes that the exempted transaction in PTE 99-34 is described as involving plans for which JPMCC, through one of its lines of business, including JPMCB, acts as directed trustee or custodian and for which it also operates through a division as securities lending agent or sub-agent. The Applicant represents that in the period since PTE 99-34 was granted, it has become more common

for a plan to engage a securities lending agent that is not the plan's trustee or custodian (or an affiliate thereof). Accordingly, the Applicant requests that the language of the exemption be modified to cover relationships in which it (or an affiliate) serves only as securities lending agent and not also trustee or custodian. The Applicant requests that such language change be made retroactive to the original effective date of the exemption. The Department has proposed the suggested modification.

Application of Statutory Criteria

The Applicant represents that the requested amendment to PTE 99-34 meets the statutory criteria under ERISA section 408(a) as follows:

The requested exemption is administratively feasible because it would not impose any administrative burdens on the Applicant or the Department beyond those described in JPMCB's existing exemption, PTE 99-34. With respect to existing securities loans, each of PTE 99-34's current conditions has been satisfied, except for two conditions as to which the Applicant proposes to comply on a retroactive basis. In addition, the requested temporary relief for securities loans from managed assets will be subject to conditions that are self-executing. The advance under the Master Note for which relief was requested has matured and was fully repaid as of Friday, June 13, 2008; accordingly, Applicant states that the Department will not have to monitor the implementation or enforcement of the relief.

Applicants represent that the exemption for securities loans is in the interests of the plan and its participants and beneficiaries, as, if the existing securities loans between JPMCB as securities lending agent for ERISA plans and Bear Stearns Borrowers were terminated, the result would be disruptive to the plans and to the securities lending market for the following reasons. First, the Bear Stearns Borrowers may not be able to return the securities immediately because of, among other things, the inability of third parties to redeliver those securities to the applicable Bear Stearns Borrower or a scarcity of borrowing sources. Second, it may be difficult in the current market to immediately find borrowers for all the recalled securities, resulting in lost income opportunities for the affected plans. Third, JPMCB may need to liquidate the investments in which it has placed the cash collateral for the loans so that it can return the cash to the

² 70 FR 49305 (August 23, 2005).

³ 56 FR 31966 (July 12, 1991).

⁴ Preamble to Proposed Amendment to PTE 84-14, 68 FR 52423 (September 3, 2003).

Bear Stearns Borrowers. Since the cash collateral is invested mainly in short-term fixed-income securities and obligations that JPMCB had planned to hold to maturity, but whose market value may be depressed because of current market conditions, liquidating the collateral at this time could result in losses to the affected plans.

The Master Note was a privately negotiated lending arrangement between JPMCB as manager of securities lending cash collateral for various investors, including ERISA plans, and certain Bear Stearns entities. While the individual notes under the Master Note could, under their terms, be sold or transferred with the consent of the Bear Stearns borrowers, there was no market for the notes following the publicized problems with Bear Stearns' financial solvency that led to the merger agreement with JPMCC on March 16, 2008. Even if a sale might have been possible, it would likely have been at a substantial discount due to Bear Stearns' circumstances, resulting in a loss to the investing plans. Holding the Master Note advance to maturity was in the interests of the affected plans because it permitted them to realize the full value of the advance, including both principal and interest, without loss. Furthermore, even while they continued to hold interests in the Master Note advance, they were not exposed to the risk of default by Bear Stearns' financial difficulties because, under the terms of the proposed relief, repayment of the Master Note advance was unconditionally guaranteed by JPMCB, which continued to have a high credit rating.

The requested amendment to PTE 99–34 would be protective of the rights of the participants and beneficiaries of the affected plans because PTE 99–34, as amended, would incorporate the safeguards that the Department has previously found to be protective. JPMCB would continue to be subject to the requirements of PTE 99–34, which in turn, incorporates the procedural requirements of PTE 2006–16 and its predecessors Prohibited Transaction Exemption 81–6, 46 Fed. Reg. 7527 (Jan. 23, 1981) and Prohibited Transaction Exemption 82–63, 47 Fed. Reg. 14804 (April 6, 1982). The only exception would be the timing of when the information required to be provided by PTE 99–34 is furnished regarding the Bear Stearns Borrowers—the plan fiduciaries will still receive the information. Furthermore, as described above, the requested temporary relief for securities loans from managed assets will be subject to an automated system block to assure that JPMCB-affiliated

asset managers will not have information regarding which outstanding securities loans are to Bear Stearns Borrowers. Finally, the requested exemption for investment of plan assets in the Master Note advance would be protective of the rights of participants and beneficiaries of the affected plans because JPMCB, a large financial institution with a high credit rating, has unconditionally guaranteed the repayment of the advance under the Master Note. Furthermore, the advance has, as of June 13, 2008, been repaid in full.

In summary, the Applicants represent that the requested exemption will satisfy the statutory criteria of section 408(a) of ERISA and section 4975(c)(2) of the Code for the following reasons:

(A) The Applicant's securities loans to Bear Stearns Borrowers have met the conditions of PTE 99–34, except certain disclosure and approval requirements under circumstances where it was not feasible to obtain advance disclosures and approvals due to the unexpected timing of the Merger Agreement's execution.

(B) Where disclosures were not provided in advance of a loan transaction, the Applicant will furnish such disclosures as soon after the Merger Agreement's execution as it was administratively feasible to do so.

(C) While some loans would not comply with a condition of PTE 99–34 because the underlying assets were managed by a JPMCB affiliate, JPMCB intends to terminate those loans within 90 days and in the interim to prevent the affiliated manager from obtaining information regarding which securities are on loan to Bear Stearns Borrowers, thereby preventing any potential conflict of interest.

(D) Permitting the securities loans to Bear Stearns Borrowers to continue in this fashion will avoid the need to terminate the loans at a time of high market volatility, which could result in investment losses and lost income opportunities for the affected plans.

Notice to Interested Persons

The applicant will distribute notice of the proposed amendment by U.S. Postal Service to an independent plan fiduciary for each plan currently utilizing Applicant's securities lending services that previously approved making securities loans to Bear Stearns Borrowers. Notification will be mailed within 15 days after publication of this proposed amendment in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the

publication of this proposed amendment in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and/or 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and/or the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary provisions of section 404 of the Act which, among other things, requires a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transaction which is the subject of this exemption. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department; and

(4) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its beneficiaries and protective of the rights or participants and beneficiaries of the plan.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments and/or requests for a public hearing on the pending exemption to the address, as set forth below. All comments and requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth below.

Proposed Exemption

Based on the facts set forth in the application, and under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 99-34 as set forth below:

JPMorgan Chase Bank, National Association, located in Columbus, Ohio

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to affiliates of JPMorgan Chase & Co. Inc. (JPMCC), which are engaged in JPMCC's capital markets line of business (referred to herein as Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which JPMCC through its Financing & Market Products or any other similar division of JPMCB or a U.S. affiliate of JPMCC (collectively, FMP) acts as securities lending agent or sub-agent, and for which JPMCC, through its Investor Services line of Business, as operated through JPMCB and its affiliates (Investor Services), may also act as directed trustee or custodian, and (2) to the receipt of compensation by FMP in connection with the proposed transactions, provided the general conditions set forth below in section II are met.

Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated in the United States (J. P. Morgan Securities Inc., or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (J. P. Morgan Securities Ltd.), Canada (J. P. Morgan Securities Canada Inc.), Australia (J. P. Morgan Securities Australia Limited), Japan (J. P. Morgan Securities Japan Co. Ltd) (collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either JPMCB or JPMCC within these countries.⁵

(b) For each Client Plan, neither Investor Services, Global Capital Markets, FMP, nor any other division or affiliate of JPMCC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(i) Notwithstanding the foregoing, for the period from March 16, 2008, through June 14, 2008, section II(b) shall not apply to the lending of securities by a Client Plan to Bear Stearns Affiliates, provided that (i) no division or affiliate of JPMCC that has discretionary authority or control with respect to the investment of the assets of the Client Plan involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, has access to information regarding whether the particular securities have been loaned to a Bear Stearns Affiliate, and (ii) an Independent Fiduciary (as defined in section IV(f)) conducts a Review (as defined in section IV(g)) of Client Plan securities loans to Bear Stearns Affiliates and within 180 days of the date of publication of this proposed amendment in the **Federal Register**, issues a written report presenting its specific findings.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital

Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement with FMP, where FMP is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement with the primary lending agent where FMP is lending securities under a sub-agency agreement with the primary lending agent;⁶ and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by FMP.

Notwithstanding the foregoing, section II(c)(3) shall be deemed satisfied with respect to the lending of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent for the period between March 16, 2008, and April 15, 2008, provided (i) FMP provided to such Client Plans no later than April 15, 2008, a description of the general terms of the securities loan agreements between such Client Plans and the Bear Stearns Affiliates and (ii) at the time of providing such information, FMP notified each Client Plan of the following: that it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates; if a written objection was received from a Client Plan within the 10-day period, FMP would cease to make any new securities loans for that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization,

⁵ Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

⁶ The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than FMP, beyond that provided pursuant to PTE 2006-16.

recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least the percentage required in PTE 2006–16 (as amended from time to time) but in no case less than 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent or the percentage otherwise required by 2006–16.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and FMP monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes FMP the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by FMP to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the

most recent financial statement furnished to the Client Plan. In the event of any such changes, FMP requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

Notwithstanding the foregoing, section II(i) shall be deemed satisfied with respect to the lending of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent for the period between March 16, 2008, and April 15, 2008, provided (i) FMP provided to such Client Plans no later than April 15, 2008, the most recently available audited and unaudited consolidated statements of the financial condition of the parent company of the applicable Bear Stearns Affiliates and the parent company's subsidiaries, and notice of any material adverse change in financial condition since the date of the most recent financial statement being furnished to the Client Plans, and (ii) at the time of providing such information, FMP notified each Client Plan of the following: That it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates; if a written objection was received from a Client Plan within the 10-day period, FMP would cease to make any new securities loans for that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 2006–16 (as amended from time, or alternatively, any additional or superseding class exemption that may

be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, JPMCB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, FMP will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus

(iii) Interest from such date to the date of payment.

The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either JPMCB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption are provided to the Client Plan.

(o) Each Client Plan receives a monthly report with respect to its

securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption for PTE 99–34 (64 FR 34281, 6/25/99), so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are “plan assets” under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are “plan assets” under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority in the case of J.P. Morgan Securities Ltd.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), in the case of J.P. Morgan Securities Canada Inc.;

(iii) The Australian Securities & Investments Commission in the case of J.P. Morgan Securities Australia Ltd.; and

(iv) The Financial Services Agency in the case of J.P. Morgan Securities Japan Ltd.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by JPMCB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign

jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with FMP on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) JPMCB or J.P. Morgan Securities Inc. (JPMSI) maintains, or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of JPMCB or JPMSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than JPMCB or JPMSI shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of JPMCB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

Section III. Temporary Exemption for Investment in Bear Stearns Master Note

The restrictions of sections 406(a)(1)(A) through (D) and sections 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of securities lending collateral by JPMCB, as the investment manager of such collateral on behalf of the Client Plan or Collective Fund that has lent the securities, in the Bear Stearns Master Note (as defined in paragraph (b) below), provided that the condition set forth below in paragraph (a) is met.

(a) Repayment of the Bear Stearns Master Note is unconditionally guaranteed by JPMCB.

(b) For purposes of this Section III, the term "Bear Stearns Master Note" means the \$750 million Evergreen Advance dated October 23, 2007, under the Master Note Agreement dated February 9, 2007, by and between JPMCB as agent for a group of lending entities and certain subsidiaries of The Bear Stearns Companies Inc., which matured on June 13, 2008, and was paid in full.

Section IV. Definitions

For purposes of this exemption,

(a) The terms "JPMCB" and "JPMCC" as referred to herein in Sections I, II and III, refer to JPMorgan Chase Bank, National Association, and its parent, JPMorgan Chase & Co., Inc.

(b) The term "affiliate" means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with JPMCC or its successors. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) The term "U.S. Affiliated Borrower" means an affiliate of JPMCC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term "Foreign Affiliated Borrower" means an affiliate of JPMCC that is a bank or a broker-dealer which is supervised by—

(i) The Financial Services Authority in the United Kingdom;

(ii) OSFI in Canada;

(iii) The Australian Securities & Investments Commission in Australia; and

(iv) The Financial Services Agency in Japan.

(e) The term "Bear Stearns Affiliate" means The Bear Stearns Companies Inc.

and its affiliates as constituted on March 15, 2008.

(f) The term "Independent Fiduciary" means a fiduciary who is independent of and unrelated to JPMCB and Bear Stearns Affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB and Bear Stearns Affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with JPMCB or a Bear Stearns Affiliate;

(ii) Such fiduciary, or any officer, director, partner, employee or relative of the fiduciary, is an officer, director, partner or employee of JPMCB or a Bear Stearns Affiliate (or is a relative of such persons);

(iii) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption, except that the Independent Fiduciary may receive compensation from JPMCB for acting as Independent Fiduciary as contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision; or

(iv) The annual gross revenue received by such fiduciary, during any year of its engagement, from JPMCB and Bear Stearns Affiliates exceeds five percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(g) The term "Review" means a test by an Independent Fiduciary of a representative sample of transactions falling under section II(b)(i) of this Exemption that is sufficient in size to afford the Independent Fiduciary a reasonable basis to make findings as to compliance with the following:

(i) Whether allocation of the opportunity to lend securities to the applicable client plan account was in accordance with JPMCB's internal securities loan allocation procedures;

(ii) Whether the loan of securities by the Client Plan to Global Capital Markets was at market rates and terms which were at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party (as required by section II(d) hereof);

(iii) Whether with respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, were to unrelated borrowers (as required by section II(q) of the exemption); and

(iv) Whether investment by the applicable Client Plan in the underlying securities that were loaned was consistent with the investment guidelines for the particular Client Plan account.

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99-34, refer to the proposed exemption (64 FR 34281, June 25, 1999) and the grant notice (64 FR 46419, August 25, 1999).

Signed at Washington, DC, this 17th day of October, 2008.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8-25235 Filed 10-22-08; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Part 46—Training, Training Plans, and Records; Sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the 30 CFR Sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11; Training Plans, New Miner Training; Newly-Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training.

DATES: Submit comments on or before December 22, 2008.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2141, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to Ferraro.Debbie@dol.gov, along with an original printed copy. Ms. Ferraro can be reached at (202) 693-9821 (voice), or (202) 693-9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph (a) of § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by MSHA. For each size category, the Agency estimates that 20 percent of mine operators will choose to write a plan and send it to MSHA for approval.

Paragraph (d) requires mine operators to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written

comments on the plan to mine operators, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by mine operators, but by miners and their representatives.

Paragraph (g) requires that the miners' representative must be provided with a copy of the approved plan within one week after approval. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (h) allows mine operators, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal.

Paragraph (i) requires mine operators to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, mine operators must have the capability to provide the plan upon request by MSHA, miners, or their representatives.

Paragraph (a) of § 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

Paragraph (a) of § 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

Paragraph (a) of § 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide the miner with training that addresses the changes.

Paragraph (a) of § 46.8 requires, at least every 12 months, that the mine operator provide each miner with no less than 8 hours of refresher training.

Paragraph (a) of § 46.9 requires the mine operators upon completion of each training program, to record and certify on MSHA Form 5000-23, or on a form that contains the required information, that the miner has completed the training. False certification that training was completed is punishable under § 110(a) and (f) of the Act.

Paragraph (a) of § 46.11 requires the mine operator to provide site-specific

hazard training to non-miners, including the following persons: Scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the training and retraining of miners, training plans, and records of training. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (<http://www.msha.gov/>) and selecting "Rules and Regs", and then selecting "Fed Reg Docs."

III. Current Actions

USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United States. The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991.

MSHA's objective in these requirements is to ensure that all miners receive the required training, which would result in a decrease in accidents, injuries, and fatalities. Therefore, MSHA

is continuing this requirement under 30 CFR 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0131.

Title: Part 46—Training, Training Plans, and Records; Sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11.

Affected Public: Business or other for-profit.

Total Respondents: 6,325.

Frequency: On occasion.

Total Responses: 1,077,296.

Estimated Total Burden Hours: 295,779 hours.

Estimated Total Burden Cost: \$493,634.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 17th day of October, 2008.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E8-25248 Filed 10-22-08; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[08-080]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA

Clearance Officer, NASA Headquarters, 300 E Street, SW., JB0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for an undergraduate or graduate scholarship. Students are required to submit an application package consisting of an application form, academic background, proposed area of study, curriculum vitae or personal statement, three letters of reference, and an essay or research proposal.

II. Method of Collection

NASA will utilize a Web-based application form with instructions and other application materials also on-line. All data will be collected via this Web-based application (separate under graduate and graduate forms) and unless the user chooses to download the application form and other application materials and mail them in.

III. Data

Title: NASA Aeronautics Scholarship Program.

OMB Number: 2700-0134.

Type of Review: Revision of currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 400.

Estimated Time per Response: 1.0 hour.

Estimated Total Annual Burden Hours: 400 hours.

Estimated Total Annual Cost: \$0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8-25199 Filed 10-22-08; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (08-081)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's Science Engineering Mathematics and Aerospace Academy (SEMMA) is a national education project, which works with K-12 students and their families, that employs hands-on, inquiry-based activities and emphasizes the benefits of STEM literacy. This data collection will help to assess SEMMA project effectiveness and to provide data that can inform decisions made by NASA leadership and local sites about project modifications and implementation.

II. Method of Collection

NASA will utilize a Web-based application form with instructions and other application materials also on-line. All data will be collected via this Web-

based application (separate under graduate and graduate forms) and unless the user chooses to download the application form and other application materials and mail them in.

Data will be collected by means of a telephone survey with site directors and via paper surveys from applicants and participants and their parents.

III. Data

Title: SEMAA (Science Engineering Mathematics and Aerospace Academy) Program Evaluation.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2030.

Estimated Number of Responses per Respondent: 2.

Estimated Time per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 2030 hours.

Estimated Total Annual Cost: \$0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8–25200 Filed 10–22–08; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide (DG)–1205.

FOR FURTHER INFORMATION CONTACT:

Khoi Nguyen, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–0701 or e-mail to Khoi.Nguyen@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Bypassed and Inoperable Status Indication for Nuclear Power Plant Safety Systems," is temporarily identified by its task number, DG–1205, which should be mentioned in all related correspondence. DG–1205 is proposed Revision 1 of Regulatory Guide 1.47.

DG–1205 describes a method that the staff of the NRC considers acceptable for use in complying with the NRC's regulations with respect to bypassed and inoperable status indication for nuclear power plant safety systems. The regulatory framework that the NRC has established for nuclear power plants consists of a number of regulations and supporting guidelines applicable to bypassed and inoperable status indication, including, but not limited to, General Design Criterion (GDC) 1, "Quality Standards and Records," GDC 13, "Instrumentation and Control," GDC 19, "Control Room," GDC 21, "Protection System Reliability and Testability," GDC 22, "Protection System Independence," and GDC 24, "Separation of Protection and Control Systems," as set forth in Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR part 50). GDC 1 requires that structures, systems, and components important to safety be designed and installed to quality standards commensurate with the importance-to-safety of the functions to be performed. GDC 13 requires that appropriate controls be provided to maintain variables and systems that can affect the fission process, the integrity of the reactor core, the reactor coolant pressure boundary, and the containment and its associated systems within

prescribed operating ranges. GDC 19 requires that a control room be provided from which actions can be taken to operate the nuclear power unit safely under normal operating conditions. GDC 21 requires that the protection system be designed for high functional reliability and inservice testability. GDC 22 requires that the protection system be designed to ensure that the effects of normal operating, maintenance, and testing on redundant channels do not result in the loss of the protection function. GDC 24 requires that interconnection of the protection and control systems be limited to ensure that safety is not significantly impaired.

II. Further Information

The NRC staff is soliciting comments on DG–1205. Comments may be accompanied by relevant information or supporting data and should mention DG–1205 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to:* nrcprep.resource@nrc.gov.

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1205 may be directed to the NRC contact, Khoi Nguyen at (301) 415–0701 or e-mail to Khoi.Nguyen@nrc.gov.

Comments would be most helpful if received by December 22, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG-1205 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS (<http://www.nrc.gov/reading-rm/adams.html>), under Accession No. ML082140114.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to pdrc.resource@nrc.gov.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 17 day of October 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

*Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.*

[FR Doc. E8-25292 Filed 10-22-08; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange
Commission, Office of Investor
Education and Advocacy,
Washington, DC 20549-0213.

Extension:

Rule 3a-8; SEC File No. 270-516; OMB
Control No. 3235-0574.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 3a-8 (17 CFR 270.3a-8) of the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act"), serves as a nonexclusive safe harbor from investment company status for certain research and development companies ("R&D companies").

The rule requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.¹ An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

Rule 3a-8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a-8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a-8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a-8 are to ensure that: (i) The board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a-8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Commission staff estimates that approximately 500 R&D companies may rely on rule 3a-8. Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),² the Commission believes that all the companies that rely on rule 3a-8 adopted their board resolutions and established written investment

guidelines in 2003 when the rule was adopted. We expect that newly formed R&D companies would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.³ Therefore, we estimate that rule 3a-8 will not create additional time burdens.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/ CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: October 16, 2008.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25238 Filed 10-22-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange
Commission, Office of Investor
Education and Advocacy,
Washington, DC 20549-0213.

Extension:

Rule 0-1, SEC File No. 270-472, OMB
Control No. 3235-0531.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") plans to submit to the Office of Management and Budget a

¹ Rule 3a-8(a)(6) (17 CFR 270.3a-8(6)).

² In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

³ In order for these companies to raise sufficient capital to fund their product development stage, we believe they will need to present potential investors with investment guidelines. Investors would want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the "Act")¹ establishes a comprehensive framework for regulating the organization and operation of investment companies ("funds"). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.²

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0-1 (17 CFR 270.0-1).³ Rule 0-1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0-1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term "independent legal counsel," as defined in rule 0-1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules ("exemptive rules") under the Act.⁴

The Commission amended rule 0-1 to include the definition of the term "independent legal counsel" in 2001.⁵ This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an

"independent legal counsel." This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, "management organizations") or their "control persons"⁶ during the past two years, rule 0-1 requires that the board's independent directors make a determination about the adequacy of the counsel's independence. A majority of the board's independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel's prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel's professional judgment and legal representation. Rule 0-1 also requires that a record for the basis of this determination is made in the minutes of the directors' meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must reevaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of "independent legal counsel" under rule 0-1. We assume that approximately 4128 funds rely on at least one of the exemptive rules annually.⁷ We further assume that the independent directors of approximately one-third (1376) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.⁸ We

estimate that each of these 1376 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 1032 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately \$145,168. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (688 hours) would be incurred by compliance staff with an average hourly wage rate of \$180 per hour,⁹ and one-third of the annual hour burden (344 hours) would be incurred by clerical staff with an average hourly wage rate of \$62 per hour.¹⁰

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange

organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

⁹ The estimated hourly wages used in this PRA analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. See Securities Industry and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry—2007 (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry—2007 (2007), modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

¹⁰ $(688 \times \$180/\text{hour}) + (344 \times \$62/\text{hour}) = \$145,168$.

¹ 15 U.S.C. 80a.

² For example, fund directors must approve investment advisory and distribution contracts. See 15 U.S.C. 80a-15(a), (b), and (c).

³ Investment Company Act Release No. 4 (Oct. 29, 1940) (5 FR 4316 (Oct. 31, 1940)). Note that rule 0-1 was originally adopted as rule N-1.

⁴ The relevant exemptive rules are: rule 10f-3 (17 CFR 270.10f-3), rule 12b-1 (17 CFR 270.12b-1), rule 15a-4(b)(2) (17 CFR 270.15a-4(b)(2)), rule 17a-7 (17 CFR 270.17a-7), rule 17a-8 (17 CFR 270.17a-8), rule 17d-1(d)(7) (17 CFR 270.17d-1(d)(7)), rule 17e-1(c) (17 CFR 270.17e-1(c)), rule 17g-1 (17 CFR 270.17g-1), rule 18f-3 (17 CFR 270.18f-3), and rule 23c-3 (17 CFR 270.23c-3).

⁵ See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

⁶ A "control person" is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund's management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

⁷ Based on statistics compiled by Commission staff, we estimate that there are approximately 4586 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (4128) actually rely on at least one exemptive rule annually.

⁸ We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management

Commission, c/o Shirley Martinson,
6432 General Green Way, Alexandria,
VA 22312; or send an e-mail to:
PRA_Mailbox@sec.gov.

Dated: October 16, 2008.

J. Lynn Taylor,
Assistant Secretary.

[FR Doc. E8-25244 Filed 10-22-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange
Commission, Office of Investor
Education and Advocacy,
Washington, DC 20549-0213.

Extension:

Rule 17a-7; SEC File No. 270-238; OMB
Control No. 3235-0214.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-7 (17 CFR 270.17a-7) (the "rule") under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act") is entitled "Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof." It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies ("funds"), that are affiliated persons ("first-tier affiliates") or affiliated persons of affiliated persons ("second-tier affiliates"), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a-7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund's board of directors to establish procedures reasonably designed to ensure that the rule's conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund

enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.¹ The Commission's examination staff uses these records to evaluate for compliance with the rule.

While most funds do not commonly engage in transactions covered by rule 17a-7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.² Of the approximately 3891 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a-7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.³ The staff estimates that there are approximately 150 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these policies and procedures, as follows; 3 hours spent by a compliance attorney, and 1 hour collectively spent by the board of directors. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 600 hours.⁴

Of the 3891 existing funds, the staff assumes that approximately 25% (or 973), enter into transactions affected by rule 17a-7 each year (either by the fund directly or through one of the fund's series), and that the same percentage (25%, or 38 funds) of the estimated 150 funds that newly register each year will also enter into these transactions, for a total of 1011⁵ companies that are affected by the recordkeeping requirements of rule 17a-7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all

relevant transactions were made in compliance with the company's policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.⁶ The staff estimates that the burden related to making these records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors)⁷ or 3033 total hours each year.⁸

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a-7 is 3633 hours.⁹ The staff also estimates that there are approximately 1161 respondents and 8238 total responses.¹⁰

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 17a-7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

⁶ Commission staff believes that rule 17a-7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a-2 under the Act. Rule 31a-2 requires companies to preserve certain records for specified periods of time.

⁷ The staff estimates that funds that rely on rule 17a-7 annually enter into an average of 8 rule 17a-7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company's policies and procedures.

⁸ This estimate is based on the following calculation: (3 hours × 1011 companies = 3033 hours).

⁹ This estimate is based on the following calculations: (600 hours + 3033 hours = 3633 total hours).

¹⁰ This estimate is based on the following calculations: (150 newly registered funds + 1011 funds that engage in rule 17a-7 transactions = 1161); (1011 funds that engage in rule 17a-7 transactions × 8 times per year = 8088); (8088 + 150 = 8238 responses).

¹ The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

² Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

³ Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

⁴ This estimate is based on the following calculations: (4 hours × 150 = 600 hours).

⁵ This estimate is based on the following calculation: (973 + 38 = 1011).

minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: October 16, 2008.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25245 Filed 10-22-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58806; File No. 4-566]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

October 17, 2008.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed pursuant to Rule 17d-2 of the Act,² by the American Stock Exchange LLC ("Amex"), BATS Exchange, Inc. ("BATS"), Boston Stock Exchange, Inc. ("BSE"), Chicago Board Options Exchange, Inc. ("CBOE"), Chicago Stock Exchange, Inc. ("CHX"), Financial Industry Regulatory

Authority, Inc. ("FINRA"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market, LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX"), New York Stock Exchange LLC ("NYSE"), NYSE Arca Inc. ("NYSE Arca"), NYSE Regulation, Inc. (acting under authority delegated to it by NYSE) ("NYSE Regulation"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participating Organizations" or "Parties") concerning the surveillance, investigation, and enforcement of insider trading rules.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by

the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d-2.¹¹ The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common NYSE Members¹² or Common FINRA Members,¹³ as applicable, (collectively,

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ See Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4-566).

¹² Common NYSE Members include members of the NYSE and at least one of the Participating Organizations.

¹³ Common FINRA Members are members of FINRA and at least one of the Participating Organizations.

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

“Common Members”) for the surveillance, investigation, and enforcement of common insider trading rules (“Common Rules”).¹⁴ The Plan assigns regulatory responsibility over Common NYSE Members to NYSE Regulation for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur. The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NASDAQ-listed stocks and Amex-listed stocks, as well as any CHX solely-listed stock, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

III. Proposed Amendment to the Plan

On October 16, 2008, the Participating Organizations submitted a proposed amendment to the Plan. The purpose of the amendment is to: (1) Add BATS as a participant to the Plan; (2) substitute CBOE as a participant for CBOE Stock Exchange, LLC; (3) clarify that CBOE’s allocation of regulatory responsibilities under the Plan is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE; (4) clarify that ISE’s allocation of regulatory responsibilities under the Plan is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE; and (5) add language to facilitate the addition of new SROs to the Plan where such new SROs do not assume regulatory responsibilities under the Plan. The amended agreement replaces the previous agreement in its entirety. The text of the proposed amendments to the Plan is as follows (additions are *italicized*; deletions are [bracketed]):

* * * * *

Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78q (d), and Rule 17d-2 Thereunder

This agreement (the “Agreement”) by and among the American Stock

Exchange LLC (“Amex”), *BATS Exchange, Inc.* (“BATS”), Boston Stock Exchange, Inc., [CBOE Stock Exchange, LLC] *Chicago Board Options Exchange, Inc.* (“CBOE”)^{†1}, Chicago Stock Exchange, Inc. (“CHX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange, LLC (“ISE”)^{†2}, The NASDAQ Stock Market LLC (“NASDAQ”), National Stock Exchange, Inc., New York Stock Exchange, LLC (“NYSE”), NYSE Arca Inc. (“NYSE Arca”), NYSE Regulation, Inc. (pursuant to delegated authority) (“NYSE Regulation”), and Philadelphia Stock Exchange, Inc. (together, the “Participating Organizations”), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. § 78q(d), and Securities and Exchange Commission (“SEC”) Rule 17d-2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (“SROs”). *Upon approval by the SEC, this Agreement shall amend and restate the agreement among the Participating Organizations (except BATS and CBOE, the latter of which replaces CBOE Stock Exchange, LLC) approved by the SEC on September 12, 2008.*

* * * * *

27. Amendment.

a. This Agreement may be amended [by any writing duly] *to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by NYSE Regulation, FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow NYSE Regulation and FINRA to jointly add new Participating Organizations to the Agreement as provided above. NYSE Regulation and FINRA will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.*

b. *All other amendments must be made approved by each Participating Organization. [The addition of] All amendments, including adding a new Participating Organization[to the Agreement will require an amendment. All such amendments], must be filed*

^{†1} CBOE’s allocation of certain regulatory responsibilities to NYSE/FINRA under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.

^{†2} ISE’s allocation of certain regulatory responsibilities to NYSE/FINRA under this Agreement is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE.

with and approved by the Commission before they become effective.

* * * * *

EXHIBIT A: COMMON INSIDER TRADING RULES

* * * * *

BATS Rule 3.1 Business Conduct of ETP Holders

BATS Rule 3.2. Violations Prohibited

BATS Rule 3.3. Use of Fraudulent Devices

BATS Rule 4.1 Requirements

BATS Rule 5.1. Written Procedures

BATS Rule 5.3 Records

BATS Rule 5.5 Chinese Wall Procedures

BATS Rule 12.4 Manipulative Transactions

* * * * *

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4–566 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 4–566. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of Amex, BATS, BSE, CBOE, CHX, FINRA, ISE, NASDAQ, NSX, NYSE, NYSE Arca, NYSE Regulation, and Phlx. All comments received will

¹⁴ Common Rules are defined as: (i) Federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. See Exhibit A to the Plan.

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 4-566 and should be submitted on or before November 13, 2008.

V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act¹⁵ and Rule 17d-2 thereunder¹⁶ in that it is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as proposed to be amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules over Common NYSE Members, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, to NYSE and over Common FINRA Members, with respect to NASDAQ-listed stocks, Amex-listed stocks, and any CHX solely-listed stock, to FINRA. Accordingly, the proposed Plan promotes efficiency by consolidating these regulatory functions in a single SRO based on the listing market for a stock, with regard to Common NYSE Members and Common FINRA Members.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add BATS as a participant to the Plan. By approving the amendment today, BATS can be included in the Plan prior to beginning operations as a national securities exchange.¹⁷ In addition, the amendment would facilitate the process of adding new participants to the Plan in the future. This amendment also makes technical changes to the Plan to clarify that CBOE's allocation of regulatory responsibilities under the Plan is limited to the activities of the CBOE Stock Exchange, LLC, a facility of

CBOE, CBOE is a participant to the Plan instead of CBOE Stock Exchange, LLC, and ISE's allocation of regulatory responsibilities under the Plan is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay. In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.¹⁸ Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4-566.

It is therefore ordered, pursuant to Section 17(d) of the Act,¹⁹ that the Plan, as amended, made by and among Amex, BATS, BSE, CBOE, CHX, FINRA, ISE, NASDAQ, NSX, NYSE, NYSE Arca, NYSE Regulation, and Phlx filed with the Commission pursuant to Rule 17d-2 on October 16, 2008 is hereby approved and declared effective.

It is further ordered that the Participating Organizations are relieved of those regulatory responsibilities allocated to NYSE and FINRA under the Plan in File No. 4-566.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25240 Filed 10-22-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2804 / 803-180]

WLD Enterprises, Inc.; Notice of Application

October 17, 2008.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: WLD Enterprises, Inc. ("Applicant").

Relevant Advisers Act Sections: Exemption requested under section

202(a)(11)(G) of the Advisers Act from section 202(a)(11) of the Advisers Act.

Summary of Application: Applicant requests that the Commission issue an order declaring it, existing and future Pool Advisory Entities, as defined below, and their respective employees acting within the scope of their employment, to be persons not within the intent of section 202(a)(11) of the Advisers Act, which defines the term "investment adviser."

DATES: Filing Dates: The application was filed on January 27, 2005, and an amended and restated application was filed on October 17, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2008 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicant, WLD Enterprises, Inc., c/o Shelley Marciano, 401 East Las Olas Boulevard, Suite 2200, Ft. Lauderdale, Florida 33301.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or David W. Blass, Assistant Director, at (202) 551-6787 (Office of Investment Adviser Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, NE., Washington DC 20549-0102 (telephone (202) 551-5850).

Applicant's Representations

1. The Applicant was organized as a Florida corporation to provide services to Mr. William Horvitz and his descendants and is wholly owned by Mr. William Horvitz's two children. It operates as a "family office" for Mr. William Horvitz, his wife Norma Horvitz, and their lineal descendants (including by adoption), and such lineal descendants' spouses, two step-children

¹⁵ 15 U.S.C. 78q(d).

¹⁶ 17 CFR 240.17d-2.

¹⁷ See Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August).

¹⁸ See *supra* note 11.

¹⁹ 15 U.S.C. 78q(d).

²⁰ 17 CFR 200.30-3(a)(34).

of Mr. William Horvitz's son, such step-children's spouses and their children, one of Mr. William Horvitz's brothers, such brother's spouse, his two children and four grandchildren, and the spouses of these children and grandchildren (collectively, the "Horvitz Family" or "Family").

2. Applicant provides services exclusively to: (i) The members of the Horvitz Family; (ii) private charitable foundations established exclusively by members of the Horvitz Family ("Private Foundations"); (iii) trusts that exist exclusively for the benefit of members of the Horvitz Family and Private Foundations ("Family Trusts"); (iv) pooled investment vehicles that have been created exclusively for the benefit of, and are wholly owned by, Family members, Family Trusts, or Private Foundations ("Family Investment Entities"), except that certain key employees, as described below, are permitted to invest in these Family Investment Entities; and (v) solely for the purpose of investing in the Family Investment Entities, several executive level employees of the Applicant who have significant involvement with the investment advisory process ("Key Employees") or revocable trusts established for the benefit of Key Employees ("Key Employee Trusts"). The members of the Horvitz Family, the Private Foundations, the Family Trusts, the Family Investment Entities, and solely with respect to investments in Family Investment Entities, the Key Employees and the Key Employee Trusts, are referred to collectively as the "Family Clients."

3. Applicant provides both advisory services and non-advisory services to Family Clients, which include asset allocation advice, investment due diligence, recordkeeping assistance, federal and state tax advice, and coordination of professional relationships with accountants, attorneys and unaffiliated investment advisers. Applicant provides advisory services to Family Clients directly, or indirectly through persons that manage Family Investment Entities or Family Trusts ("Pool Advisory Entities"). All Pool Advisory Entities are wholly owned and controlled by the Applicant, the Horvitz Family, or Family Trusts.

4. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant further represents that it is not listed in any phone book as an investment adviser and does not (i) have a publicly accessible Web site, (ii) engage in any advertising, (iii) attend investment management-related conferences as a

vendor, and (iv) conduct any marketing activities.

5. Applicant represents that it and the Pool Advisory Entities do not and will not solicit or accept investment advisory clients from the public.

6. Applicant represents that it does not operate with the purpose of generating a profit. It charges fees only to pay its operating expenses and the salaries of the professionals it employs.

7. Applicant represents that it has provided each member of the Family who is not a lineal descendant (including by adoption) of Mr. William Horvitz and his wife Norma Horvitz or such lineal descendant's spouse written disclosure describing the material terms of this Application and the material legal effects associated with a Commission Order as a result of this Application, and has received written consent from these Family members.

8. Applicant acknowledges that the Order, if granted, would not affect any legal obligation (other than those under the Advisers Act) relating to the services it and the Pool Advisory Entities provide to their clients, including without limitation any applicable state fiduciary obligation.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. * * *

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides several exemptions from this registration requirement.

3. Applicant represents that it currently relies on the registration exemption provided in section 203(b)(3) of the Advisers Act for advisers that have less than 15 clients. The Applicant anticipates that this exemption will soon be unavailable to it as the number of Family Clients grows. Applicant also represents that it is not prohibited from registering with the Commission under section 203A(a) because it has assets under management of \$25,000,000 or more.

4. Applicant requests that the SEC declare it, the existing and future Pool Advisory Entities, and their respective employees acting within the scope of their employment, to be persons not

within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring that it, the Pool Advisory Entities, or their respective employees acting within the scope of their employment be registered under the Advisers Act because they offer and provide investment advisory services only to Family Clients.

Applicant's Conditions

1. The Applicant and all the existing and future Pool Advisory Entities will offer and provide advisory services only to Family Clients and will not hold themselves out to the public as investment advisers.

2. Members of the Horvitz Family will at all times comprise a majority of the Board of Directors of the Applicant.

3. The Applicant and all the existing and future Pool Advisory Entities will at all times be owned, directly or indirectly, exclusively by one or more members of the Horvitz Family.

4. All the existing and future Family Investment Entities: (a) Are excepted from the definition of "investment company" under section 3(c)(1) or section 3(c)(7) of the Investment Company Act of 1940, and (b) are owned and controlled exclusively by the Applicant, the Pool Advisory Entities, or the Family Clients.

5. If any Key Employee who owns an interest in any Family Investment Entity, directly or through a Key Employee Trust, is no longer employed by the Applicant or a Pool Advisory Entity or is no longer a Key Employee, his interest in such Family Investment Entity and/or Key Employee Trust will be limited to his investment at the time of termination (or at the time that he no longer is a Key Employee) together with reinvestment of accretions or distributions on that interest.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25243 Filed 10-22-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58807; File No. 4-568]

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for BATS Exchange, Inc.

October 17, 2008.

On August 29, 2008, the BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities

and Exchange Commission (the "Commission") a proposed minor rule violation plan ("MRVP") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on September 16, 2008.³ The Commission received no comments on the proposal. This order approves BATS's proposed

BATS's MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act⁴ requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁵ In accordance with Rule 19d-1(c)(2), the Exchange proposed to designate certain rule violations as minor rule violations, and requested that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. BATS included in its proposed MRVP the policies and procedures currently included in BATS Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules") and the rule violations included in BATS Exchange Rule 8.15.01, Interpretations and Policies.⁶

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 58485 (September 8, 2008), 73 FR 53468.

⁴ 17 CFR 240.19d-1(c)(1).

⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

⁶ On August 18, 2008, the Commission approved BATS's application for registration as a national securities exchange, including the rules governing the Exchange. See Securities Exchange Act Release No. 58375, 73 FR 49498 (August 21, 2008). In the approval order, the Commission noted that BATS Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that, as a condition to the operation of the Exchange, it must file a minor rule violation plan with the Commission. BATS represented that modifications may be made to Rule 8.15.01 in the future. BATS proposed that, when amendments to Rule 8.15.01 are made pursuant to a rule filing submitted pursuant to Rule 19b-4 under the Act, such filing would automatically be deemed a

Pursuant to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed \$2,500) on a member, an associated person of a member, or a registered or non-registered employee of a member, with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.⁷

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act⁹ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition, because the MRVP offers

request by BATS for Commission approval of a modification to its MRVP.

⁷ BATS attached a sample form of the quarterly report with its submission to the Commission.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

procedural rights to a person sanctioned under Rule 8.15, the Commission believes that Rule 8.15 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹⁰

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹¹ because the MRVP strengthens BATS's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that BATS will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Rule 19d-1(c)(2) under the Act,¹² that the proposed MRVP for BATS, File No. 4-568, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25241 Filed 10-22-08; 8:45 am]

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¹⁰ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58805; File No. SR-BSE-2008-44]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Minor Rule Plan

October 17, 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 October 10, 2008, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange (the “Exchange”) proposes to update the Boston Options Exchange Group LLC (“BOX”) rules to increase and strengthen sanctions imposed pursuant to the Minor Rule Violation Plan in connection with any Options Participant or non-Options Participant customer in accordance with BOX Rules Chapter III, Section 7. The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange, at the Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update the BOX rules to clarify and strengthen sanctions imposed for violations of BOX Rules Chapter III, Section 7 pursuant to the Minor Rule Violation Plan, as found in BOX Rules, Chapter X. The amendment will impose a flat fine amount for a violation, rather than a fine levied per contract. In addition, the proposed amendment will eliminate the current distinction between Customer accounts and Options Participant accounts. The Exchange believes these changes will serve as an effective deterrent to violative conduct.

The Exchange and certain other self-regulatory organizations (“SRO’s”), as members of the Intermarket Surveillance Group (the “ISG”), executed and filed with the Securities and Exchange Commission on October 29, 2007, a final version of the Agreement pursuant to Section 17(d) of the Securities Exchange Act of 1934 (as amended) (the “Agreement”).⁵ The members of the ISG intend to enter into an amendment to the 17d-2 Agreement in the near future concerning the surveillance and sanction of Position Limit violations. In anticipation, the SRO’s have agreed that their respective rules concerning position limits concerning options contracts are common rules and should be consistent with one another. The Exchange’s proposed amendment to its Minor Rule violation Plan will result in further consistency of sanctions among the signatories to the 17d-2 Agreement and the forthcoming amendment concerning Position Limit violations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, to promote just and equitable principles of trade, to remove impediments to and perfect the

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations set forth pursuant to Rule 19d-1(c)(2) under the Act⁸, which governs minor rule plans.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange 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

The Exchange has neither solicited, nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹¹

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission hereby grants the Exchange’s request and believes that doing so is consistent with the protection of investors and the public interest.¹² The Exchange’s proposed

⁸ 17 CFR 240.19d-1(c)(2).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSE has satisfied this requirement.

¹² For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 56941 (April 11, 2008), 73 FR 75 (April 17, 2008).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

rule change is based on a similar proposal that was previously approved by the Commission¹³ and does not raise any novel or significant issues. Therefore, the Commission designates the proposed rule change operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2008-44 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-BSE-2008-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington,

DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BSE-2008-44 and should be submitted on or before November 13, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25239 Filed 10-22-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58809; File No. SR-NASDAQ-2008-082]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Suspend, Through January 16, 2009, the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares

October 17, 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 October 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 and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to temporarily suspend, through January 16, 2009, the

application of the continued listing requirements related to bid price and market value of publicly held shares.

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

Given current market conditions, Nasdaq proposes to provide issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents temporary relief from the continued inclusion bid price⁴ and market value of publicly held shares requirements.⁵

In the past several weeks, U.S. and world financial markets have faced

⁴ Nasdaq's continued listing requirements relating to bid price are set forth in Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). Under these rules, a security is considered deficient if it fails to achieve at least a \$1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a \$1 closing bid price for a minimum of ten consecutive business days.

⁵ Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 4310(c)(7), 4320(e)(5), 4450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1). Under these rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

¹³ See Securities Exchange Act Release No. 58119 (July 8, 2008), 73 FR 40646 (July 15, 2008) (SR-CBOE-2008-53). See also Securities Exchange Act Release No. 58289 (August 1, 2008), 73 FR 46667 (August 11, 2008) (SR-ISE-2008-62).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

almost unprecedented turmoil, and the Commission has acknowledged in several recent emergency Orders that this turmoil has resulted in a crisis in investor confidence and concerns about the proper functioning of the securities markets.⁶ As a result, the number of securities trading below \$1 has increased dramatically. For example, as of September 30, 2007, there were 64 securities trading below \$1 on Nasdaq. By September 30, 2008, that number had increased to 227 and by October 9, 2008, there were 344 securities trading below \$1 on Nasdaq and over another 300 Nasdaq-listed securities trading between \$1 and \$2.⁷ Nasdaq believes that during this time there was no fundamental change in the underlying business model or prospects for many of these companies, but the decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. These same conditions make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests.

Given these extraordinary market conditions, Nasdaq has determined that the bid price and market value of publicly held shares requirements should be temporarily suspended through January 16, 2009.⁸ Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would

be suspended with respect to those requirements.⁹ Following the temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on January 19, 2009.¹⁰ Companies that were in a compliance period prior to the suspension would receive the balance of any pending compliance periods in effect at the time of the suspension.¹¹ Similarly, companies that were in the Hearings process prior to the suspension would resume in that process at the same stage they were in when the suspension went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Nasdaq believes that this temporary suspension will permit companies to focus on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment. Moreover, this temporary suspension would allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term.¹² During the temporary suspension, Nasdaq will consider whether it is appropriate to propose further revisions to these requirements.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general and with Sections 6(b)(5) of the Act,¹⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of companies to remain listed on Nasdaq during this especially turbulent market environment, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has

⁶ See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) ("The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.")

⁷ Similarly, from January 1, 2008, to September 30, 2008, the number of companies deficient in the market value of publicly held shares requirement more than doubled.

⁸ In late 2001, in response to a continuing decline in the market, which was exacerbated by the tragic events of September 11th, Nasdaq imposed a similar temporary suspension on delisting securities which were deficient in the bid price and market value of publicly held shares requirements. Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR-NASD-2001-61).

⁹ Nasdaq would continue to identify companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

¹⁰ Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that is not yet non-compliant with those requirements at the start of the suspension.

¹¹ For example, if a company is 120 days into its first 180-day compliance period for a bid price deficiency when the suspension starts and the company does not regain compliance during the suspension, the company would have an additional sixty days starting on January 19, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

¹² As noted above, following the suspension, companies presently in the compliance process will remain at that same stage of the process.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to immediately implement a temporary measure to suspend its continued listing requirements relating to bid price and market value of publicly held shares to respond to recent market volatility and conditions. The Commission notes that this will provide certain companies with immediate relief from receiving a deficiency or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance process or in the hearings process will resume at the same stage of the process if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the bid price and market value of publicly held shares requirements, or unable to cure such a deficiency, due to these market conditions. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-082 on the subject line.

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-082 and should be submitted on or before November 13, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8-25242 Filed 10-22-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58779; File No. SR-NYSE-2008-78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Rule 18 To Allow NYSE Alternext US LLC To Participate in the Compensation Fund Established by NYSE To Reimburse Claimants for Losses Associated With NYSE-Operated System Failures

October 14, 2008.

I. Introduction

On August 26, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending NYSE Rule 18 to allow NYSE Alternext US LLC ("NYSE Alternext")³ to participate in the compensation fund established by NYSE to reimburse claimants for losses associated with a malfunction of the Exchange's physical equipment, devices, and/or programming which results in an incorrect execution or no execution of an order that was received in Exchange systems (an "Exchange systems malfunction"). The proposed rule change was published for comment in the **Federal Register** on September 9, 2008.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Through a series of mergers (the "Mergers"), the American Stock Exchange LLC ("Amex") has become a subsidiary of NYSE Euronext and was renamed NYSE Alternext US LLC.⁵ In connection with the Mergers, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE Alternext US LLC will be a self-regulatory organization distinct from NYSE Euronext's European-market subsidiary, NYSE Alternext. When used throughout this order, "NYSE Alternext" refers to NYSE Alternext US LLC.

⁴ See Securities Exchange Act Release No. 58450 (September 2, 2008), 73 FR 52439 (September 9, 2008) (SR-NYSE-2008-78) ("Notice").

⁵ See Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR-Amex-2008-62) and Securities Exchange Act Release No. 58673 (September 29, 2008) (SR-Amex-2008-62).

²⁰ 17 CFR 200.30-3(a)(12).

Trinity Place, New York, New York, to the NYSE trading systems and facilities located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems"), which will be operated by the NYSE on behalf of NYSE Alternext (the "Equities Relocation").

NYSE Rule 18 establishes a compensation fund and provides a procedure for compensating NYSE member claimants in the event of an Exchange system failure.⁶ The Commission recently approved Amex's proposal to adopt a rule substantially similar to NYSE Rule 18.⁷ This rule, NYSE Alternext Equities Rule 18, provides a procedure for compensating NYSE Alternext member claimants in the event of an NYSE Alternext systems failure. Specifically, under NYSE Alternext Equities Rule 18, NYSE Alternext members and member organizations affected by a failure of the NYSE Alternext Trading Systems would have the right to submit claims for compensation to NYSE Alternext. NYSE Alternext's Compensation Review Panel would then decide the validity of NYSE Alternext claims.

Because NYSE Alternext will operate on the Exchange's trading systems after the Equities Relocation, NYSE proposes to amend NYSE Rule 18 to provide a mechanism for NYSE Alternext itself to seek reimbursement from NYSE for the amounts that NYSE Alternext undertakes to pay out to NYSE Alternext members under NYSE Alternext Equities Rule 18 as a result of an Exchange system malfunction.⁸ Thus, after the NYSE Alternext Compensation Review Panel has determined the number and amount of claims that NYSE Alternext deems valid, NYSE Alternext would submit to the NYSE a separate claim for each valid claim made by NYSE Alternext members or member organizations, subject to the same requirements under NYSE Rule 18 as any other NYSE claimant. NYSE Alternext will not, however, be required to provide verbal notice of its claims to the Exchange's Division of Floor Operations.

In the event that the total amount of valid claims by NYSE members and

NYSE Alternext exceeds the available funds in the NYSE Rule 18 compensation fund, NYSE Alternext would receive a partial payment of claims pursuant to NYSE Rule 18(c), and NYSE Alternext's obligation to compensate its members for valid claims would be reduced by a like percentage.⁹ In the event that a reduction is required, in calculating any such reduction, NYSE officials would consider each claim submitted by NYSE Alternext as a separate claim, so that all claimants from both the Exchange and NYSE Alternext will share equitably from the compensation fund.

NYSE also proposes technical changes to NYSE Rule 18, including corrections to the numbering of certain subparagraphs of the Rule.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed amendments to NYSE Rule 18 provide for a fair and reasonable process by which NYSE Alternext may participate in the compensation fund established by the Exchange to reimburse claimants for losses suffered due to a malfunction of systems operated by the Exchange.

⁹ In the Notice, NYSE stated that it does not anticipate that the additional claims by NYSE Alternext would create a substantial burden on the fund in the event of a system malfunction in view of: (i) The probable volume of trading on NYSE Alternext; (ii) the fact that to date, the existing compensation fund has been sufficient to pay all valid claims in full; and (iii) the current amount available in the supplemental fund. Notice at 52440.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2008-78) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-25319 Filed 10-22-08; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11479]

Kentucky Disaster # KY-00017

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 Commonwealth of Kentucky (FEMA-1802-DR), dated 10/09/2008.

Incident: Severe Wind Storm associated with Tropical Depression Ike
Incident Period: 09/14/2008 through 09/15/2008.

EFFECTIVE DATE: 10/09/2008.

Physical Loan Application Deadline Date: 12/08/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2009.

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 10/09/2008, 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: Ballard, Boone, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Crittenden, Daviess, Fulton, Gallatin, Graves, Hancock,

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

⁶ See Securities Exchange Act Release Nos. 56085 (July 17, 2007), 72 FR 40348 (July 24, 2007) (SR-NYSE-2007-09) (adopting NYSE Rule 18); 56718 (October 29, 2007), 72 FR 62506 (November 5, 2007) (SR-NYSE-2007-95) (approving certain amendments to NYSE Rule 18). For a complete discussion of Rule 18, see the Notice, *supra* note 4.

⁷ See Securities Exchange Act Release No. 34-58705 (October 1, 2008) 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

⁸ NYSE Alternext members and member organizations would not be able to submit their claims directly to the NYSE.

Henderson, Hickman, Hopkins, Jefferson, Livingston, Lyon, Marshall, Mcracken, Mclean, Meade, Muhlenberg, Ohio, Oldham, Shelby, Trigg, Trimble, Union, Webster.

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 11479.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-25326 Filed 10-22-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11478]

North Carolina Disaster # NC-00016

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 North Carolina (FEMA-1801-DR), dated 10/08/2008.

Incident: Tropical Storm Hanna.

Incident Period: 09/04/2008 through 09/15/2008.

EFFECTIVE DATE: 10/08/2008

Physical Loan Application Deadline Date: 12/08/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 07/08/2009.

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 10/08/2008, 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: Beaufort, Brunswick, Person.

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 for economic injury is 11478.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-25328 Filed 10-22-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11480]

Oklahoma Disaster # OK-00025

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 Oklahoma (FEMA-1803-DR), dated 10/09/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 09/12/2008 through 09/19/2008.

EFFECTIVE DATE: 10/09/2008.

Physical Loan Application Deadline Date: 12/08/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2009.

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 10/09/2008, 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: Alfalfa, Cimarron, Dewey, Ellis, Grant, Harper, Kay, Major, Woods, Woodward.

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 11480.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-25325 Filed 10-22-08; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 6414]

Bureau of Verification, Compliance and Implementation: Imposition of Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that thirteen foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act, which provides for penalties on entities and individuals for the transfer to or acquisition from Iran since January 1, 1999, the transfer to or the acquisition from Syria since January 1, 2005, or the transfer to or acquisition from North Korea since January 1, 2006, of equipment and technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The

latter category includes (a) Items of the same kind as those on multilateral lists but falling below the control list parameters, when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) other items with potential of making such a material contribution, when added through case-by-case decisions, and (c) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists.

DATES: *Effective Date:* October 23, 2008.

FOR FURTHER INFORMATION CONTACT: On general issues: Mr. Stephen J. Tomchik, Bureau of Verification, Compliance, and Implementation, Department of State. Telephone (202) 647-1192. For U.S. Government procurement ban issues: Kimberly Triplett, Office of the Procurement Executive, Department of State, Telephone: (703) 875-4079.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 2 and 3 of the Iran, North Korea and Syria Nonproliferation Act (P.L. 109-353), the U.S. Government determined on August 12, 2008 that the measures authorized in Section 3 of the Act shall apply to the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

China Xinshidai Company (China) and any successor, sub-unit, or subsidiary thereof;

China Shipbuilding and Offshore International Corporation, LTD (China) and any successor, sub-unit, or subsidiary thereof;

Huazhong CNC (China) and any successor, sub-unit, or subsidiary thereof;

Islamic Revolutionary Guard Corps (IRGC) (Iran) and any successor, sub-unit, or subsidiary thereof;

Korea Mining Development Corporation (North Korea) and any successor, sub-unit, or subsidiary thereof;

Korea Taesong Trading Company (North Korea) and any successor, sub-unit, or subsidiary thereof;

Yolin/Yullin Tech, Inc., Ltd. (South Korea) and any successor, sub-unit, or subsidiary thereof;

Rosoboronexport (ROE) (Russia) and any successor, sub-unit, or subsidiary thereof;

Sudan Master Technology (Sudan) and any successor, sub-unit, or subsidiary thereof;

Sudan Technical Center Company (STC) (Sudan) and any successor, sub-unit, or subsidiary thereof;

Army Supply Bureau (Syria) and any successor, sub-unit, or subsidiary thereof;

R and M International FZCO (United Arab Emirates) and any successor, sub-unit, or subsidiary thereof;

Venezuelan Military Industries Company (CAVIM) (Venezuela) and any successor, sub-unit, or subsidiary thereof.

According, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may have determined;

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government, except to the extent that the Secretary of State otherwise may have determined;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: October 16, 2008.

Stephen A. Elliott,

Acting Assistant Secretary for Verification, Compliance, and Implementation, Department of State.

[FR Doc. E8-25316 Filed 10-22-08; 8:45 am]

BILLING CODE 4710-27-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lake County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for the Lake County, Illinois, Transportation Improvement Project.

FOR FURTHER INFORMATION CONTACT:

Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492-4600. Diane O'Keefe, P.E., Region One Engineer, District 1, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705-4201.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, issued a notice of intent to prepare an environmental impact statement (EIS) on a proposal to identify a system of strategic roadway, rail, and bus improvements as well as a package of transportation management strategies necessary to help address the key congestion and mobility problems in Lake County, Illinois. A Notice of Availability of the Draft EIS was published in the **Federal Register** on September 21, 2001 (Volume 66, Number 184). Three alternatives were presented in detail in the Draft EIS including the No Action Alternative, Illinois 53 Freeway/Tollway Alternative and the Illinois 83/U.S. 45 with U.S. 12 Alternative.

Due to public opposition and lack of regional support, this project has been put on hold indefinitely. At this time there are no plans to prepare a Final EIS for this project. Comments or questions concerning this notice should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

Issued on: October 16, 2008.

Norman R. Stoner,

Division Administrator, Springfield, Illinois.
[FR Doc. E8-25125 Filed 10-22-08; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Notice of Final Federal Agency Actions on Proposed Highway in Virginia**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(1)(1). The actions relate to a proposed highway project on new location, Route 460, between the Route 58 Bypass in Suffolk and Interstate 295 in Prince George County, in the City of Suffolk, Isle of Wight County, Town of Waverly, Southampton County, Sussex County, and Prince George County, State of Virginia. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 21, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Sundra, Planning and Environment Program Manager, Federal Highway Administration, 400 North 8th Street, Suite 750, Richmond, Virginia 23219; telephone: (804) 775-3353; e-mail: Ed.Sundra@dot.gov. The FHWA Virginia Division Office's normal business hours are 7 a.m. to 4:30 p.m. (eastern time). You may also contact Mr. Chris G. Collins, Project Studies Manager, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219; telephone: (804) 225-3608, e-mail: CG.Collins@VDOT.Virginia.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing approvals for the following highway project in the State of Virginia: Route 460, from the Route 58 Bypass in Suffolk to Interstate 295 in Prince George County, in the City of Suffolk, Isle of Wight County, Town of Waverly, Southampton County, Sussex County, and Prince George County. The project will be approximately 88.5 km (55 mi) long and is proposed as a limited access principal arterial roadway on new location. The typical section consists of

a four-lane, divided highway with two twelve-foot lanes in each direction, a 40-foot depressed median, and paved shoulders. Seven interchanges are proposed along the project at the following secondary roads to provide access to communities in the study area: Routes 258, 616, 620, 40, 602, 625, and 156. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on June 10, 2008, in the FHWA Record of Decision (ROD) issued on September 12, 2008, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Virginia Department of Transportation at the addresses provided above. The FHWA FEIS can be viewed and downloaded from the project Web site at: http://www.virginiadot.org/projects/hamptonroads/route_460_location_study.asp.

This notice applies to all FHWA decisions and approvals as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401-7671(q).
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. Wildlife: Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
7. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988

Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: October 8, 2008.

Edward Sundra,

Planning and Environment Program Manager, Richmond, Virginia.

[FR Doc. E8-25161 Filed 10-22-08; 8:45 am]

BILLING CODE 4910-RY-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 1098-C**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes.

DATES: Written comments should be received on or before December 22, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622-6688, at Internal Revenue Service, room 6129, 1111 Constitution

Avenue, NW., Washington, DC 20224, or through the Internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Contributions of Motor Vehicles, Boats, and Airplanes.

OMB Number: 1545-1959.

Form Number: 1098-C.

Abstract: Section 884 of the American Jobs Creation Act of 2004 (Pub. L. 108-357) added new paragraph 12 to section 170(f) for contributions of used motor vehicles, boats, and airplanes. Section 170(f)(12) requires that a donee organization provide an acknowledgement to the donor of this type of property and is required to file the same information to the Internal Revenue Service. New Form 1098-C may be used as the acknowledgement and it, or an acceptable substitute, must be filed with the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 1, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8-25218 Filed 10-22-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0671]

Proposed Information Collection (Traumatic Injury Protection (TSGLI)) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a current collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine servicemembers' eligibility requirements for payment of traumatic injury protection benefits covered under Servicemembers' Group Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 22, 2008.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0671" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Traumatic Injury Protection (TSGLI).

OMB Control Number: 2900-0671.

Type of Review: Extension of a currently approved collection.

Abstract: Servicemembers who experienced a traumatic injury such as loss of limbs on or after October 7, 2001 through November 30, 2005 are eligible to receive Traumatic Injury Protection benefits if the loss was incurred during Operation Enduring Freedom or Operation Iraqi Freedom. TSGLI provides severely injured servicemembers and the member's family with monetary assistance through an often long and difficult rehabilitation period. The servicemembers must be insured under the Servicemembers' Group Life Insurance to be eligible for TSGLI. The servicemember, the attending physician, and the branch of service must complete Prudential Form GL2005.261, Certification of Traumatic Injury Protection in order for the servicemember to receive such benefits. VA uses the data collected to determine the member's eligibility for TSGLI benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 475 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 950.

Dated: October 14, 2008.

By direction of the Secretary.

Denise McLamb,

*Program Analyst, Records Management
Service.*

[FR Doc. E8-25288 Filed 10-22-08; 8:45 am]

BILLING CODE 8230-01-P



Federal Register

**Thursday,
October 23, 2008**

Part II

Department of Education

**34 CFR Parts 674, 682, and 685
Federal Perkins Loan Program, Federal
Family Education Loan Program, and
William D. Ford Federal Direct Loan
Program; Final Rule**

DEPARTMENT OF EDUCATION**34 CFR Parts 674, 682, and 685**

RIN 1840-AC94

[Docket ID ED-2008-OPE-0009]

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement provisions of the College Cost Reduction and Access Act of 2008 (CCRAA) (Pub. L. 110-84), including the statutory provisions that establish the Income-Based Repayment (IBR) plan and the Public Service Loan Forgiveness Program.

DATES: *Effective Date:* These regulations are effective July 1, 2009.

Implementation date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, and loan servicers that administer the Perkins Loan, FFEL and Direct Loan programs, may, at their discretion, choose to implement the new and amended provisions of §§ 674.34, 682.210, 682.211, and 685.204 governing the military service and post-active duty student deferments, including related forbearance provisions contained in these final regulations on or after November 1, 2008. For further information, see the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to the IBR plan, Pamela Moran or John Kolotos. Telephone: (202) 502-7732 or (202) 502-7762 or via the Internet at: Pamela.Moran@ed.gov or John.Kolotos@ed.gov. For information related to the Public Service Loan Forgiveness Program, Nikki Harris. Telephone: (202) 219-7050 or via the Internet at: Nikki.Harris@ed.gov. For information related to the economic hardship deferment, the military service deferment, or the post-active duty student deferment, Vanessa Freeman. Telephone: (202) 502-7523 or via the Internet at: Vanessa.Freeman@ed.gov.

For information related to not-for-profit loan holders, Pamela Moran. Telephone: (202) 502-7732 or via the Internet at: Pamela.Moran@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: On July 1, 2008, the Secretary published a notice of proposed rulemaking (NPRM) for the Perkins Loan, FFEL, and Direct Loan Programs in the **Federal Register** (73 FR 37694).

In the preamble to the NPRM, the Secretary discussed on pages 37695 through 37697 the major regulations proposed in that document to implement provisions of the CCRAA, including the following:

- Amending §§ 674.34 and 682.210, which govern economic hardship deferments in the Perkins Loan and FFEL programs to define the term “family size”, clarify that the poverty guidelines used in determining economic hardship are issued by the U.S. Department of Health and Human Services (HHS), provide that the poverty guideline used for a borrower who is not a resident of a State identified in the poverty guidelines is the poverty guideline for the relevant family size for the 48 contiguous States, and eliminate the economic hardship deferment categories based on the 20/220 provisions.

- Amending §§ 674.34(i)(3), 682.210(u)(3), and 685.204(f)(1)(ii) to clarify that a borrower’s eligibility for a post-active duty student deferment terminates if the borrower returns to enrolled student status on at least a half-time basis, and that a borrower returning from active duty who is in a grace period is not required to waive the grace period to use the 13-month post-active duty student deferment.

- Amending §§ 674.34(i)(2)(i) and (ii), 682.210(u)(2)(i) and (ii), and 685.204(f)(2)(i) and (ii) to clarify that, for purposes of the post-active duty student deferment, active State duty for members of the National Guard includes both active State duty under which a Governor activates members of the National Guard under State statute or policy and the activities are paid for with State funds, and active State duty under which a governor, with the approval of the President or the U.S. Secretary of Defense, activates members

of the National Guard and the activities are paid for with Federal funds.

- Amending §§ 674.34(i)(2)(iv), 682.210(u)(2)(iv), and 685.204(f)(2)(iv) to specify that active duty for purposes of the active duty deferment does not include a borrower who is serving full-time in a permanent position with the National Guard, unless the borrower is reassigned as part of a call-up to active duty service.

- Amending §§ 674.34(h)(7), 682.210(t)(9), and 685.204(e)(7) to authorize loan holders to grant a military service deferment to an otherwise eligible borrower for an initial deferment period not to exceed 12 months based on a request from either the borrower or the borrower’s representative.

- Amending §§ 674.34(i)(4), 682.210(u)(4), and 685.214(f)(4) to specify that if a borrower is eligible for both the 180-day military service deferment following the borrower’s demobilization, and the 13-month post-active duty student deferment, the borrower’s eligibility for these separate deferments runs concurrently.

- Amending § 682.211(h) to require a FFEL loan holder to grant a mandatory forbearance to a borrower who is called to active State duty for more than 30 days and who does not qualify for a military service deferment during the active State duty service period, but who qualifies for the post-active duty student deferment.

- Adding new §§ 682.215(a) and 685.221(a) to incorporate the statutory definition of the term partial financial hardship, and define related terms including Adjusted Gross Income (AGI), family size, poverty guideline, and eligible loan.

- Adding new §§ 682.215(b) and 685.221(b) to incorporate the statutory formula for calculating a monthly payment under the IBR plan, adjusting that payment when the borrower’s loans are held by more than one loan holder, and establishing minimum payment amounts.

- Adding new §§ 682.215(b), 682.215(c), 685.221(b), and 685.221(c), and amending § 682.300(b) to incorporate the statutory provisions requiring IBR payments to be applied first toward interest due on the loan, next toward any fees, and then to the loan principal, and to provide that if the borrower’s payment is insufficient to pay accrued interest, the Department pays (or on a Direct Loan, does not charge) the accrued interest on an eligible subsidized loan for a period of three consecutive years from the date the borrower initially began repayment on each loan under the IBR plan.

- Adding new §§ 682.215(d) and 685.221(d) to establish the terms and repayment amounts for a borrower who no longer has a partial financial hardship but wants to continue making income-based payments under IBR, or for a borrower who wants to leave the IBR plan entirely.

- Adding new §§ 682.215(e) and 685.221(e) to establish the procedures a loan holder must follow to determine annually whether a borrower has a partial financial hardship by verifying the borrower's AGI and family size. If the borrower does not provide family size information, the loan holder uses a family size of one.

- Adding new §§ 682.215(f) and 685.221(f) to establish the conditions that a borrower must satisfy to qualify for loan forgiveness under IBR, establish how a loan holder determines whether a borrower made qualifying payments, and provide that the Department will repay or cancel the loan after 25 years if the borrower makes qualifying payments and meets certain requirements.

- Amending § 682.302(a) to provide for a separate calculation of the special allowance rate for the unpaid accrued interest on a loan in repayment under the IBR plan.

- Amending § 685.209(c) to identify the periods specified in section 455(e) of the HEA that count toward the 25-year repayment requirement under the Income Contingent Repayment (ICR) plan, and to provide that repayment periods will continue to count for certain borrowers currently in ICR.

- Amending § 682.302(f) to incorporate statutory changes to the definition of not-for-profit holder and to describe the circumstances in which a State or non-profit entity is deemed to be owned or controlled by a for-profit entity.

- Adding a new § 685.219(c) to incorporate the statutory requirements that a borrower must satisfy to qualify for public service loan forgiveness and provide that a borrower in an AmeriCorps position may make qualifying payments by using his or her AmeriCorps education award.

- Adding a new § 685.219(b) to define several terms including employee, full-time, public interest law, and public service organization, needed to implement the public service loan forgiveness program.

- Adding a new § 685.219(d) and (e) to provide that the Department will cancel any balance remaining on a loan for a borrower who works in a qualifying public service job and who makes 120 qualifying payments while employed in such a job and requests

loan forgiveness on a form provided by the Department.

- Amending §§ 682.201 and 685.220 to provide that a FFEL borrower may obtain a Direct Consolidation loan for the purpose of using the public service loan forgiveness program.

There are no significant differences between the NPRM and these final regulations resulting from public comments.

In addition to the changes necessary to implement provisions of the CCRAA, these final regulations also incorporate certain changes made to the HEA by the Higher Education Opportunity Act (HEOA) (Pub. L. 110–315) enacted on August 14, 2008. These changes are:

- Amending §§ 682.215(a)(2) and 685.221(a)(2) to exclude defaulted loans from the category of eligible loans for IBR repayment and deleting the proposed amendments to §§ 682.215(g)(7), 682.410(b)(5)(vi)(G), and (b)(9)(i)(D) that regulated a guaranty agency's consideration of a defaulted loan for IBR and the reimbursement to a guaranty agency on a defaulted loan that was forgiven under IBR.

- Amending the definition of *Public Service Organization* in § 682.219 for the purpose of the Public Service Loan Forgiveness program to replace in paragraph (5)(i) the term “public child care” with the phrase “early childhood education (including licensed or regulated child care, Head Start, and State-funded pre-kindergarten)”; and to add in paragraph (5)(i) a parenthetical statement after “public health” that reads “(including nurses, nurse practitioners, nurses in a clinical setting and full-time professionals engaged in health care practitioner occupations and health care support occupations as such terms are defined by the Bureau of Labor Statistics).”

- Amending the definition of *Government employee* in § 682.219 for the purpose of the Public Service Loan Forgiveness program to exclude members of the U.S. Congress.

Because these amendments merely implement statutory changes made to the HEA by the HEOA, we do not discuss them in the Analysis of Comments and Changes section.

Waiver of Proposed Rulemaking and Negotiated Rulemaking Regulations Implementing the HEOA

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish an NPRM and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs

authorized under title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the APA.

Although the regulations implementing the HEOA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary has determined that it is unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the limited regulatory changes. These changes simply amend the Department's regulations to reflect statutory changes made by the HEOA that are already effective. The Secretary does not have discretion as to whether or how to implement these changes.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the title IV, HEA programs, the Secretary is using the authority granted her under section 482(c) of the HEA to designate the new and amended provisions in §§ 674.34, 682.210, 682.211, and 685.204 governing the military service deferment and post-active duty student deferment, including related forbearance provisions for early implementation at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate.

Analysis of Comments and Changes

Except as noted above in regard to the limited regulations implementing provisions of the HEOA, the regulations in this document were developed

through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 1, 2008, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 15. More than 1700 parties submitted comments, many of which were substantially similar. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes.

Economic Hardship Deferment (§§ 674.34 and 682.210)

Comment: Many commenters objected to the proposed elimination of what has been referred to as the "20/220" debt-to-income eligibility criterion for an economic hardship deferment in the title IV student loan programs. Medical and dental school students and residents, medical and dental school administrators, and major medical and dental associations voiced particular concern about the impact of the elimination of the 20/220 debt-to-income test on medical and dental interns and residents with high debt burdens and limited income during several years of required additional training that coincide with the borrower's first few years of loan repayment. The commenters believed that the impact of eliminating this criterion would be particularly acute for those borrowers pursuing their additional training in urban areas with high living costs. The commenters urged the Secretary to use the discretion

provided to her under section 435(o)(1)(B) of the HEA to establish additional criteria for economic hardship deferments to either reinstate the 20/220 test permanently or to provide an equivalent loan deferment funding mechanism to help these types of borrowers. The commenters contended that doing so would enable these borrowers to continue to have the option to postpone loan payments. The commenters noted that the only other option for these borrowers would be to request a period of forbearance during which interest would be capitalized during this crucial period of training.

Several commenters argued that the loss of this repayment option will deter new physicians from pursuing primary care and research specialties, pursuing a career with the public health service, or practicing medicine in underserved areas, in lieu of more lucrative specialties.

A commenter who represents participating Federal Perkins Loan schools and loan servicers argued that the rationale for eliminating the 20/220 economic hardship category in the FFEL and Direct Loan Programs (i.e., the availability of the new IBR plan and program costs) does not apply to the Federal Perkins Loan program. The commenter believed that there are no Federal costs associated with deferments granted in the Federal Perkins Loan program and noted that IBR is not available to Perkins Loan borrowers except through loan consolidation in the FFEL or Direct Loan Programs, which also results in the loss to the borrower of several Federal Perkins loan benefits. Consequently, the commenter asked the Department to retain the 20/220 debt-to-income criterion for an economic hardship deferment in the Federal Perkins Loan Program regulations.

A few commenters recommended that the definition of "family size" for the purpose of the economic hardship deferment be revised to specify the period of time a borrower must provide support to "other individuals" in order to include those individuals in the borrower's family size. To ensure consistent application of the definition of "family size" in the regulations for IBR, as the Secretary indicates she intended, the commenters recommended that the prescribed period be specified to be "the year the borrower certifies family size." Additionally, the same commenters recommended that the definition of "family size" be further modified for both IBR and economic hardship deferment purposes to include the borrower's unborn children who will be

born during the year in which the borrower will be certifying family size and for whom the borrower will be providing more than half their support to ensure consistency with the definition of "household size" used in the Free Application for Federal Student Aid (FAFSA).

An organization that includes FFEL Program lenders and loan servicers noted that the July 1, 2009, effective date for the elimination of the 20/220 debt-to-income economic hardship criterion did not appear to permit a lender to grant a deferment on or after July 1, 2009, to an eligible borrower for a retroactive deferment period that began prior to July 1, 2009, as would normally be the case for deferments granted under the FFEL Program. The commenter requested that the Department clarify the implementation of the effective date to allow a lender to grant such a deferment to an eligible borrower after July 1, 2009, for up to a 12-month period for a deferment period that starts prior to that date.

Discussion: The Department did not eliminate the 20/220 rule in the final regulations published on November 1, 2007, (72 FR 61959) so that borrowers could temporarily continue to qualify for an economic hardship deferment on that basis and to ease the transition for affected borrowers until the newly created IBR plan becomes available on July 1, 2009. Congress eliminated the 20/220 rule from the HEA and effectively replaced it with the new IBR plan, which will provide assistance to more borrowers with high levels of debt over a much longer period of limited earnings than the economic hardship deferment.

The IBR plan does not provide for postponing all borrower payments for a period of time like a deferment. It provides for reduced payments when a borrower can demonstrate partial financial hardship. Depending upon the borrower's circumstances, IBR payments may be less than accrued interest and some borrowers may not be required to make a payment. A borrower has a partial financial hardship if the annual amount due on all of his or her eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, is more than 15 percent of the difference between the borrower's AGI and 150 percent of the poverty line income for the borrower's family size. If the borrower's monthly payment amount is not sufficient to cover the accruing interest on the borrower's subsidized Stafford Loans (or on the portion of the borrower's Consolidation Loan that represents subsidized Stafford Loans), the

Secretary pays the unpaid accrued interest for a period of up to three consecutive years from the point the borrower entered the IBR plan on the loan. Any unpaid accruing interest on the same borrower's unsubsidized Stafford Loans would be capitalized less frequently under IBR than it otherwise would be under either an economic hardship deferment or during a forbearance period. The Department believes that this plan will be advantageous to many borrowers, including borrowers who would have been eligible for the economic hardship deferment under the 20/220 criterion.

The Department disagrees with the commenter's recommendation that the 20/220 economic hardship eligibility criterion be retained in the Federal Perkins Loan Program. The commenter is correct that IBR is not available to Federal Perkins Loan borrowers unless they consolidate their Perkins loans into a FFEL or Direct Consolidation Loan and that a Perkins Loan borrower loses the various employment-related Perkins Loan cancellation opportunities and other benefits by consolidating. Perkins Loan holders, however, may provide low-income borrowers with relief from high payments under § 674.33(c)(2) by extending the borrower's repayment period for up to an additional 10 years for low-income individuals, which will, in most cases, result in reduced monthly payment amounts.

The Department disagrees with the contention that there would be no Federal costs in keeping the 20/220 provision for the Federal Perkins Loan Program. The Perkins loan fund is a Federal asset and, during deferment periods, the fund loses both borrower principal payments and interest that would otherwise accrue and be paid by the borrower.

The Department also does not believe it is appropriate to continue the 20/220 economic hardship criterion only for borrowers in the Perkins Loan Program, the title IV loan program with the lowest average indebtedness and the most generous repayment terms. Finally, the Department believes that since Perkins Loan borrowers generally also have FFEL or Direct Loans, the regulations that govern the economic hardship deferment should be consistent across all the title IV student loan programs.

With regard to the comments on the definition of "family size," we disagree that for purposes of determining family size the period a borrower must provide support to other individuals is the same period as that specified for purposes of IBR. Borrowers requesting a deferment are certifying to their eligibility for the period for which they are requesting the

deferment, and a borrower's family size is relevant for that period. Under the IBR plan, borrowers certify to their family size so that the loan holder can determine a borrower's eligibility for the year the borrower elects the plan, and for each subsequent year that the borrower remains on the plan. The period for which a borrower may request a deferment will often differ from the initial and each subsequent year a borrower is repaying under the IBR plan. However, we agree that the time period for which the borrower certifies family size for purposes of the IBR plan should be clearer in the regulations. We also agree that an unborn child may be included if that child will be born during the year the borrower certifies family size or for the period the borrower requests an economic hardship deferment.

The Department agrees that a loan holder may grant an economic hardship deferment under the 20/220 criterion to an eligible borrower who requests a deferment after July 1, 2009, for a deferment period that began prior to July 1, 2009, and is for a period not to exceed 12 months from that pre-July 1, 2009, start date. No additional economic hardship deferment periods may be granted based on that criterion to the borrower at the conclusion of that deferment period, or for any deferment request on or after July 1, 2009, for a deferment period that begins on or after that date.

Changes: We have added the phrase "at the time the borrower certifies family size" to the definition of "family size" in §§ 682.215(a)(3) and 685.221(a)(3) for purposes of the IBR plan. We have also amended the definition of family size for purposes of the economic hardship deferment and the IBR plan in §§ 674.34(e)(8)(ii), 682.210(s)(6)(ix), 682.215(a)(3), and 685.221(a)(3) to clarify that an unborn child is included if that child will be born in the year the borrower certifies family size.

Military Service Deferment and Post-Active Duty Student Deferment (§§ 674.34, 682.210, 682.211, and 682.204)

Comment: One commenter asked that we clarify that all borrowers who return to school on at least a half-time basis after being demobilized from active duty military service, lose the ability to defer payments via the post-active duty student deferment. The commenter believed that the reference in the proposed regulations to "the conclusion of the borrower's active duty military service and any applicable grace period" could create a loophole for

borrowers who re-enroll after their date of demobilization but prior to the end of their grace period. The commenter believes that this language would unintentionally allow ineligible borrowers to receive deferments.

Another commenter asked the Department to clarify that the mandatory forbearance described in § 682.211(h)(2)(iii) does not cover National Guard members who are called to Federal active duty if the active duty does not fall under a war, a military operation as defined in 10 U.S.C. 101(a)(13), or a national emergency declared by the President due to a terrorist attack. Another commenter also recommended that the same mandatory forbearance provision be amended to clarify that the forbearance would begin after the borrower ceases at least half-time enrollment.

Discussion: The reference in the proposed regulations governing the post-active duty student deferment to the expiration of the borrower's applicable grace period was not intended to provide a borrower who returns to school after being demobilized, but before using the full grace period on a loan, with an opportunity to retain unlimited eligibility for the post-active duty student deferment after completing school or dropping to less than half-time enrollment, which could be many years later. Under these final regulations, all borrowers who return to at least half-time enrollment following demobilization will lose eligibility for the deferment. Eligible borrowers who do not return to school after being demobilized, however, will receive their full grace period on a loan before the 13-month post-active duty student deferment period would begin.

With regard to the comment on clarifying the applicability of mandatory forbearance, we note that the provision in § 682.211(h)(2)(iii) mentioned by the commenter only applies to members of the National Guard who qualify for a post-active duty student deferment. A member of the National Guard cannot qualify for a post-active duty student deferment for Federal duty. A member of the National Guard may only qualify for the post-active duty student deferment for active State duty. The active State duty may be paid for with State funds, as provided in § 682.210(u)(2)(i), or with Federal funds, as provided in § 682.210(u)(2)(ii). But, in both cases, the member of the National Guard is on active State duty, not on Federal duty.

A member of the National Guard on Federal duty is on "full-time National Guard duty", as that term is defined in

10 U.S.C. 101(d)(5). The post-active duty student deferment only applies to borrowers on active duty as defined in 10 U.S.C. 101(d)(1). The definition of "active duty" in section 101(d)(1) explicitly excludes "full-time National Guard duty". Therefore, a borrower on "full-time National Guard duty" may not qualify for a post-active duty student deferment, or for the mandatory forbearance specified in § 682.211(h)(2)(iii).

A borrower on "full-time National Guard duty" may qualify for a military service deferment, if the borrower meets the other eligibility criteria for the military service deferment. A forbearance covering the period of active duty military service is not necessary for a borrower who qualifies for a military service deferment.

We agree with the commenter that the mandatory forbearance period would begin only after the borrower ceases at least half-time enrollment.

Changes: Section 682.211(h)(2)(iii)(B) has been amended to specify that the mandatory forbearance period for a FFEL loan in repayment begins on the day after the borrower ceases enrollment on at least a half-time basis.

Income-Based Repayment (IBR) Plan

General Comments

Comment: A couple of commenters recommended that a borrower's total student loan debt, including private education loans and the Federal student loan debt held by all the borrower's loan holders, be considered when calculating the borrower's maximum payment amount under the IBR plan. Another commenter asked that the Department provide reduced interest rates, or forgiveness of a portion of the loan principal, during periods of financial hardship when a borrower is making payments. This commenter also recommended that lenders use a standardized format to explain the determination of the payment amount under IBR to the borrower, so that both the calculation and the source of information can be verified.

One commenter recommended that we include illustrations that demonstrate a borrower's successful compliance or technical noncompliance with the IBR requirements in the final regulations.

A few commenters noted that a lender may use alternative documentation to verify the borrower's income when the borrower's AGI is not available, or the loan holder suspects that the AGI does not accurately reflect the borrower's current income. These commenters recommended that the borrower, as well

as the lender, have the option to provide alternative documentation in place of the AGI. Another commenter recommended that we not use AGI at all, but rely on current year income instead.

Another commenter noted that the IRS disclosure form that will be used to determine a borrower's AGI permits the IRS to provide AGI and "other" tax information to the lender. This commenter recommended that "other" be removed from the regulations, so that extraneous tax information is not provided to lenders.

Discussion: The HEA provisions governing IBR do not authorize the use of non-Federal education debt in determining whether a borrower has a partial financial hardship or in calculating IBR payment amounts. Nor does the law provide for reduced interest rates for borrowers in IBR, or for loan forgiveness before the borrower has made 25 years of payments. The Secretary does not have the authority to make these changes to the IBR plan. However, as specified in § 682.215(b)(1)(i), loan holders must take into account a borrower's eligible Federal student loans held by all of the borrower's loan holders when determining monthly payment amounts.

The Department thanks the commenter for the recommendation that lenders use a standardized format to provide IBR payment amount information to a borrower. This is an operational issue and the Department will consider the commenter's recommendation when developing operational guidance to implement the IBR plan.

The Department does not generally include illustrations in its regulations, but will consider providing examples and illustrations, as necessary, in other operational guidance, training materials, and consumer information developed to implement IBR.

The IBR provisions of the HEA require the use of the borrower's AGI to determine whether a borrower has a partial financial hardship. The Department believes that using AGI from the borrower's most recent tax return is the most accurate method to document and verify the borrower's annual income for the purpose of calculating IBR payment amounts. However, we recognize that, in some cases a tax return AGI will not be available, or will not accurately reflect the borrower's current financial circumstances. Therefore, the regulations allow a loan holder to use alternative documentation of the borrower's income under those circumstances. It is up to the loan

holder to decide if it is appropriate to use alternative documentation. However, a borrower may alert the loan holder to any changed financial circumstances that may support the use of alternate documentation.

The consent form the borrower signs is an IRS form, not a Department of Education form. The IRS consent form is used for many purposes unrelated to the IBR plan. The "other" tax information referenced in the regulations includes any other tax information covered by the standard IRS form. Tax information covered by the consent form but not needed for IBR determinations would not need to be tracked or captured in any way by the loan holder.

Changes: None.

Electing IBR

Comment: Several commenters opined that, under the proposed regulations, low-income borrowers who have partially paid the principal on their loans and have less than 10 years remaining to repay their loans would not qualify for lower payments under the IBR plan even if the borrowers' loan payments were high. The commenters argued that these borrowers would not be considered to have partial financial hardships based on a 10-year repayment of their current loan balance. The commenters recommended that the regulations be changed to use the borrowers' current payments to determine if the borrowers would be eligible for lower IBR payments. They contend that this would avoid penalizing borrowers who made payments on their loans, but who might benefit from the IBR plan.

Discussion: The commenters misinterpreted the proposed regulations, which reflect the statutory requirement by providing that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. In determining whether a borrower has a partial financial hardship, the loan holder compares two amounts: (1) The annual amount a borrower would pay, at the time the borrower initially entered repayment, on the total outstanding balance of his or her loans, based on a standard repayment over a 10-year repayment period; and (2) the annual amount the borrower would pay under the income-based provisions. The commenters' belief that the borrower's current loan balance would be used as the first part of this comparison is not accurate. Rather, the first part of the comparison uses the annual amount determined as of the date the borrower entered

repayment, without regard to the borrower's current payments.

Changes: None.

Comment: A group of commenters noted that because the HEOA amended the HEA with respect to the eligibility of defaulted borrowers for the IBR plan, the Department should revise the regulations to reflect that change and clarify that borrowers who are in default are not eligible for the IBR plan for their defaulted loans.

Discussion: The Department agrees that under the HEA, as amended by the HEOA, a defaulted borrower is not entitled to elect IBR as a repayment plan. Upon default, a loan is due and payable in full by the borrower and the borrower no longer has the option to choose among the pre-default repayment plans. Under section 422(j) of the HEA, as amended by the HEOA, the Secretary has discretion to require a borrower of a defaulted FFEL loan to repay the loan under the IBR plan after it is assigned to the Department by a guaranty agency, and to require borrowers of other defaulted FFEL and Direct Loans held by the Department to also pay under the IBR plan.

Changes: Section 682.215(a)(2) has been amended to exclude defaulted loans from the category of eligible loans for IBR repayment. Proposed §§ 682.215(g)(7) and 682.410(b)(5)(vi)(G) and (b)(9)(i)(D), which would have regulated a guaranty agency's consideration of a defaulted loan for IBR and reimbursement to a guaranty agency on a defaulted loan that was forgiven under IBR have been removed.

IBR Payment Amounts

Comment: Many commenters argued that the proposed regulations for the IBR plan would disadvantage married borrowers in cases where the borrower and his or her spouse both have outstanding loans, file a joint Federal tax return, and both qualify for IBR. In these cases, married borrowers could pay up to double the monthly loan payment of two unmarried borrowers in a similar financial situation. Each of the two married borrowers could be required to make payments representing up to 30 percent of discretionary income (the amount of a borrower's income that exceeds 150 percent of the poverty guideline applicable to the borrower's family size) whereas the HEA limits payments under the IBR plan to 15 percent of discretionary income. The commenters contended that this approach amounts to a "double-counting penalty" because the proposed regulations assumed that each spouse has access to the couple's total discretionary income, without

considering that the other spouse is also making loan payments from the same discretionary income. To avoid this penalty for married borrowers, the commenters suggested that we consider both spouses' loan debt (instead of just the borrower's loan debt) in determining eligibility for the IBR plan.

Discussion: This issue was raised during the negotiated rulemaking sessions to develop the proposed regulations and was discussed in the preamble to the NPRM (73 FR 37698–37699). As the Department noted in that discussion, section 493C(a) of the HEA provides that only the borrower's loan debt is considered when determining whether the borrower has a partial financial hardship. Moreover, section 493C(d) of the HEA specifically provides for considering the individual AGI of a married borrower only when the borrower and his or her spouse file separate Federal tax returns. Thus, the policy advocated by these commenters would not be consistent with the HEA.

Changes: None.

Comment: A group of commenters asked the Department to confirm in the preamble to the final regulations that lenders may use the Department's National Student Loan Data System (NSLDS) to determine the number and amount of loans a borrower has that are eligible to be included in the IBR plan. The commenters said that a lender would need access to NSLDS because a borrower may choose which eligible loans he or she wants to include under the IBR plan, and a lender needs to know how much the borrower owes to other lenders to calculate the payment amount under the IBR plan.

Discussion: The Department agrees that lenders may use NSLDS for this purpose.

Changes: None.

Comment: Several commenters indicated that the IBR regulations for monthly payments of \$0.00 and \$10.00 were clear in the proposed regulations except when the borrower's eligible loans are held by multiple lenders. The commenters recommended that when there are multiple lenders, the application of the IBR regulations for monthly payments of \$0.00 and \$10.00 should apply at the lender level rather than at the borrower level.

Discussion: We agree.

Changes: Sections 682.215(b)(1)(ii) and (iii) and 685.221(b)(2)(ii) and (iii) have been revised to provide that the \$0.00 and \$10.00 monthly payment regulations also apply when the borrower has multiple loan holders.

Comment: Several commenters asserted that the NPRM did not clearly state when the three-year period during

which the Secretary pays a borrower's unpaid accrued interest under the IBR plan would begin. The proposed regulations stated that this period would begin on "the date the borrower initially began repayment on each loan under the income-based repayment plan". The commenters recommended that the regulations specify that this period begins with the established payment period start date on the loan. The commenters also stated that it was unclear under the proposed regulations whether the amount of the subsidy payment on behalf of the borrower was based on the borrower's monthly scheduled payment amount or the borrower's actual payment amount, and recommended that the subsidy payment be based on the borrower's actual payment. In addition, several commenters recommended that the regulations clarify that the 3-year interest subsidy period excludes any period during which the borrower receives an economic hardship deferment.

Discussion: The Department agrees that the "established payment period start date" is the appropriate date for beginning the three-year period during which the Secretary pays interest on the borrower's behalf. The Department also agrees that the regulations should reflect the provision in section 493C(b)(3) of the HEA that excludes periods of economic hardship deferment from the 3-year subsidy period. The Secretary disagrees, however, that the subsidy payment amount should be based on the actual payment of the borrower rather than the borrower's monthly scheduled payment amount. A borrower's scheduled monthly payment amount, regardless of whether it covers accrued interest, is the borrower's payment obligation. During the 3-year period, the Department's obligation under the law is to pay only the amount of unpaid accrued interest that is not the borrower's obligation to pay during this period.

Changes: Sections 682.215(b)(4) and 682.300(b)(1)(iv) have been amended to clarify that the 3-year period during which the Secretary will pay interest for a borrower under the IBR plan begins on the borrower's established repayment period start date and excludes any period during which the borrower receives an economic hardship deferment. Similar changes have also been made to § 685.221(b)(2) for the Direct Loan Program.

Comment: Several commenters noted that there are three types of repayment amounts calculated under the IBR plan. The first repayment amount is calculated to determine whether a

borrower has a partial financial hardship and is the annual payment amount calculated for a 10-year repayment period under § 682.209(a)(6)(vi) of the FFEL Program regulations and is based on the loan balance outstanding when the borrower initially entered repayment on the loan. The second calculated payment amount is the maximum monthly payment amount calculated when a borrower no longer has a partial financial hardship or no longer wishes to make IBR based payment amounts but stays within the IBR plan, and is based on a 10-year repayment period using the loan balance outstanding when the borrower began repayment on the loan under the IBR plan. The third payment amount is calculated when the borrower elects to leave the IBR plan entirely and is calculated, for a Stafford Loan, on the time remaining on a 10-year repayment period using the borrower's outstanding balance on the loan when the borrower discontinued paying under the IBR plan, and for a Consolidation Loan, on the remaining repayment period using the borrower's outstanding balance on the loan and on other student loans that were outstanding when the borrower discontinued paying under the IBR plan. During the negotiated rulemaking process, the non-Federal negotiators from the FFEL industry used the terms *standard-standard*, *standard-permanent*, and *standard-expedited* to designate these three calculated amounts and the commenters recommended that the Department incorporate these terms into the regulations for ease of understanding.

Discussion: The Department thanks the commenters for suggesting these terms. However, these terms are not used in the HEA and the Department does not believe that they should be used in the program regulations. These terms may be used for illustrative and training purposes in nonregulatory guidance.

Changes: None.

Comment: Several commenters recommended that we include preamble language to clarify that the \$50 minimum payment rule that generally applies in the FFEL Program would apply to the monthly payment calculated when a borrower no longer has a partial financial hardship. These commenters also believed that the proposed regulations regarding the maximum monthly payment amount could be interpreted to give the borrower the discretion to make a lower payment. They recommended that we clarify the regulations to specify that the loan holder, not the borrower, determines this payment amount.

Discussion: We agree that the minimum monthly payment of \$50 applies when the borrower no longer has a partial financial hardship. We also agree that the maximum monthly repayment amount is an amount determined by the loan holder, not by the borrower, based on a FFEL standard repayment plan with a 10-year repayment period.

Changes: Section 682.215(d)(1)(i) has been revised to clarify that the loan holder determines the monthly payment amount.

Comment: Several commenters recommended that the regulations in proposed § 682.215(c)(3) that require a loan holder to apply any prepayment amount or any amount that exceeds the monthly payment amount consistent with the requirements of § 682.209(b)(2)(ii) and which would advance the borrower's payment due date under certain circumstances, should not apply when a borrower's monthly payment amount is \$0.00.

Discussion: We agree that there is no need to advance the next monthly due date under 34 CFR § 682.215(c)(3) when a borrower sends in a prepayment at a time when the borrower's monthly payment amount is \$0.00. The prepayment amount should be applied in the order specified in § 682.215(c)(1): interest, collection costs, late charges, and loan principal.

Changes: Section 682.215(c)(3) has been revised to clarify that the requirement to advance a payment due date applies only when the prepayment amount equals or exceeds the monthly payment amount of \$10.00 or more. We also have added a new § 682.215(c)(4) to clarify that when the prepayment amount exceeds the monthly payment amount of \$0.00, the prepayment amount is applied consistent with § 682.215(c)(1).

Documentation and Verification Requirements

Comment: Under the proposed regulations, if a borrower selects the IBR plan, but does not provide or renew the required written consent for income verification, or withdraws consent and does not select another repayment plan, the lender places the borrower in the IBR plan, and the borrower is required to make payments based on a 10-year FFEL standard repayment plan. Several commenters recommended that the Department revise the regulations to clarify that if a borrower requests IBR, but does not provide documentation to prove partial financial hardship, then the request must be denied and the borrower must remain in his current

repayment plan or choose another plan for which he is eligible.

Discussion: The regulations address the impact of a borrower's failure to submit required documentation for the IBR plan in two places. Under § 682.209(a)(6)(v)(C), a lender must deny a borrower's request for an IBR repayment schedule if the borrower does not submit the required documentation within the time specified by the lender. The provisions in §§ 682.215(e)(2)(i) and 685.221(e)(2)(i) that are discussed by the commenters apply only to borrowers who are already in the IBR plan, but in a subsequent year fail to renew their written consent for income verification. We agree to revise the regulations to clarify this distinction.

Changes: Sections 682.215(e)(2)(i) and 685.221(e)(2)(i) have been revised to clarify that if a borrower who is already in the IBR plan fails to renew his or her consent for income verification, the loan holder treats the borrower in the same way as a borrower who no longer has a partial financial hardship.

Comment: The proposed regulations require a loan holder to determine whether a borrower has a partial financial hardship each year the borrower is in the IBR plan. Several commenters argued that a borrower who no longer has a partial financial hardship but remains in the IBR plan should not be required to provide partial financial hardship eligibility documentation for subsequent years.

Discussion: Section 493C(c) of the HEA requires a loan holder to verify each year that a borrower has a partial financial hardship and is eligible for IBR. The regulations must reflect this requirement.

Changes: None.

Comment: Under the proposed regulations, in determining whether a borrower has a partial financial hardship, the family size determination defaults to one for any year for which a borrower does not certify family size. Some commenters suggested that family size default instead to the family size previously certified by the borrower.

Discussion: The Department believes that defaulting to the prior year's family size would be a disincentive for borrowers in the IBR plan to provide to loan holders timely, updated information on their family size. Moreover, allowing family size to default to the borrower's family size for the prior year would increase Federal costs and would require a budgetary offset.

Changes: None.

Processing Loan Forgiveness in the IBR Plan

Comment: Under the proposed regulations, if a borrower leaves the IBR plan, the borrower must pay under the FFEL standard repayment plan, and the lender recalculates the borrower's monthly payments based on the time remaining in the standard 10-year repayment period. Several commenters believed the time that the borrower is in the IBR plan should be treated like a deferment or forbearance and should not be counted towards the 10-year repayment period. These commenters argued that borrowers should have the option to switch out of the IBR plan to any repayment plan for which they are eligible—not just the FFEL standard repayment plan—and effectively have a full repayment period available to them after leaving the IBR plan.

Discussion: Section 493C(b)(8) of the HEA specifies that a borrower who is repaying a loan under the IBR plan may, at any time, terminate repayment under the IBR plan and “repay such loan under the standard repayment plan.” The law does not give the borrower the option to choose a different repayment plan when terminating repayment under the IBR plan. Nor is there authority in the HEA to treat the borrower's time in the IBR plan as a deferment or forbearance that is excluded from the repayment period. However, the HEA does not require that borrowers stay in the standard 10-year repayment plan for the remaining life of the loan. As with any other borrower in the FFEL and Direct Loan programs, these borrowers may request a change in repayment plan no more frequently than annually as provided in the HEA. However, since the maximum repayment periods under other FFEL and Direct Loans repayment plans, except extended repayment and Consolidation, are 10 years, in most circumstances the repayment options for the borrower will be severely limited depending on the period of time the borrower remained in the IBR plan.

Changes: None.

Comment: Several commenters stated that they believe that under the HEA any borrower payment that is not less than either the payment calculated based on a 10-year repayment plan using the outstanding balance when the borrower began repayment, or the payment based on a 10-year repayment plan using the outstanding balance when the borrower first began IBR, should count toward the 25-year forgiveness period. The commenters asked that this reading of the HEA be reflected in the regulations.

Discussion: Section 493C(b)(7) of the HEA specifically lists the types of payments and payment plans that qualify the borrower for IBR loan forgiveness. Only payments made under the specified repayment plans and for the stipulated amounts count toward the 25 year period for forgiveness.

Changes: None.

Comment: The loan holder must request payment from the guaranty agency no later than 60 days after the loan holder determines that the borrower qualifies for loan forgiveness. Several commenters noted that the actual date a borrower qualifies for loan forgiveness under the IBR plan is a date the lender tracks, and recommended that that date be the start date for the 60-day filing period, rather than the date the lender makes the determination that the borrower qualifies, as provided for in the proposed regulations.

Discussion: We disagree with the commenters' recommendation. In the case of other loan discharges under the HEA, the trigger date for lender filing deadlines is the date the lender makes a determination of the borrower's eligibility, or the date the borrower submits a written request for discharge. The trigger date is not the actual date that the borrower became eligible for the discharge. We believe that IBR loan forgiveness should be treated similarly to loan discharges in this regard, with the 60-day filing period beginning on the date the lender determines that the borrower qualifies for loan forgiveness.

Changes: None.

Comment: Several commenters urged the Department to provide specific guidance regarding qualifying loan payments for the 25-year IBR loan forgiveness in light of the HEOA change to the HEA that excludes defaulted borrowers from IBR. The commenters asked whether all pre-default, post-default, and loan rehabilitation payments would count towards satisfying the 25-year payment requirement.

Discussion: When a borrower defaults on a loan, the loan is immediately due and payable in full. Any payments made by a borrower to the holder of the defaulted loan are not made under an authorized repayment plan. Payments made under a rehabilitation agreement with the holder are payments made on a defaulted loan. The Department believes that the result of the change made by the HEOA is that only pre-default payments will be considered qualifying payments for the purpose of the 25-year IBR forgiveness, unless the borrower is in an authorized post-default IBR plan on a defaulted loan held by the Department. However, a

borrower repaying under the IBR plan who defaults, then successfully rehabilitates the defaulted loan, and then returns to IBR on the rehabilitated loan would simply resume the 25-year repayment period for forgiveness.

Changes: Section 682.215(f) has been revised to specify that payments made on a defaulted loan are not made under a qualifying repayment plan and therefore, do not count toward the 25-year forgiveness period. A conforming change has been made to § 685.221(f).

Comment: Several commenters recommended that the regulations specify that a holder must promptly return any payment received on a loan after the guaranty agency pays the holder the forgiveness amount.

Discussion: We agree.

Changes: We have added a new § 682.215(g)(8) to the regulations, to read: “The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.”

Comment: Under the proposed regulations, a loan holder must provide the borrower with information on the required handling of the forgiveness amount. Some commenters requested that the Department clarify in the preamble that it is inappropriate for a holder to provide tax advice and that holders could comply with the regulatory requirement by directing the borrower to the IRS Web site or to IRS Publication 970 for more information. The commenters also pointed out that this provision is not in the corresponding section in the Direct Loan program regulations.

Discussion: A loan holder is expected to make a general disclosure to the borrower on what it believes to be the current tax treatment of such amounts and is encouraged to refer borrowers to the IRS for further information. The Department will provide similar information to Direct Loan borrowers but the Direct Loan program regulations do not need to be amended since the Secretary does not issue regulations to govern the Department.

Changes: None.

Comment: The proposed regulations provide that if a guarantor does not pay an IBR loan forgiveness claim, the lender resumes collection activity on the loan. Several commenters requested that we specify that the lender may capitalize the interest that accrued but was not paid on the loan for the period during which the borrower's obligation to repay the loan was suspended.

Discussion: In general, we agree that interest that accrued during the period when collection on the loan is

suspended while the loan forgiveness claim is being processed should be capitalized. However, the loan holder should not benefit if the loan holder submits the claim for forgiveness in error. Therefore, we have modified the regulations to provide for capitalization only if the forgiveness claim is not submitted by the lender in error.

Changes: Section 682.215(g) has been revised by adding the following sentence: "Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period."

Eligible Not-for-Profit Holder Definition
(§ 682.302(f)(3))

Comment: On the issue of determining when a for-profit controls a not-for-profit holder, several commenters representing FFEL industry members stated that a distinction made in the preamble to the NPRM between family members employed as lower level employees at a not-for-profit loan holder and those employed in more responsible positions is not reflected in the regulations. The commenters believed that the proposed regulations relating to a for-profit entity exercising control over a State or non-profit entity leave to the discretion of the Secretary the determination of whether the nature of a family member's employment is likely to affect the integrity of decisions made by a non-profit entity's boards or committee. The commenters pointed out that in very large organizations someone could be in a "responsible position" but have no influence or control over student loans. The commenters asked the Department to clarify that the Secretary has the discretion to determine whether a family member could be employed at a non-profit organization in a responsible position unrelated to student loans.

Discussion: The Department agrees that the proposed regulations do not draw any distinction based on the level of a family member's employment in determining whether that employment or appointment by a for-profit entity constitutes control of the non-profit entity. We note, however, that § 682.302(f)(3)(vi)(B) assumes that the employment or appointment of a family member at any level of employment constitutes controlling influence of the non-profit entity unless the Secretary specifically determines otherwise. The Secretary will examine, among other factors, the family member's level of employment or appointment in determining whether that employment

affects the integrity of the non-profit entity's decisions.

Changes: None.

Comment: Several commenters representing FFEL industry participants noted that State and non-profit entities are often required to create and use special purpose entities in connection with financing the origination or purchase of FFEL Program loans. This kind of special purpose entity is often called a "bankruptcy remote vehicle" because, although it was created by, and may appear to be a subsidiary or affiliate of, the State or non-profit entity, its asset and liability structure and its legal structure and status make its obligations secure in the event of the bankruptcy of the non-profit entity parent or guarantor. Such a special purpose entity is separate from the State or non-profit entity. By complying with various criteria established by bond rating agencies or lenders that support its bankruptcy remote status, its loans and other assets are viewed as sufficiently protected from claims by creditors of the State or non-profit entity in the event of such a bankruptcy. The commenters noted that the Department has previously taken the position that an eligible lender trustee may qualify as an eligible not-for-profit holder when it is acting on behalf of a special purpose entity related to a State or non-profit entity, even though the special purpose entity—and not the State or non-profit entity—held beneficial or legal ownership, or both, of the loans. The proposed regulations as drafted would have disqualified loans for which a State or non-profit entity was not the sole beneficial owner. Commenters asked that the Department specify in the final regulations that the Department considers loans that would qualify for the higher special allowance payment (SAP) rate if owned directly by an eligible not-for-profit holder that is a State or non-profit entity will qualify for that rate if now owned solely by its related special purpose entity.

Discussion: The Department acknowledges that the use of a special purpose entity, sometimes called a "bankruptcy remote vehicle," is often a required element of financing FFEL program loan originations and purchases by State and non-profit entities. Because the special purpose entity holds beneficial or legal ownership, or both, of the loans originally acquired by the not-for-profit holder, the Department believes the regulations, as proposed, should be revised for two reasons. First, the proposed regulations have been revised to ensure that loans acquired by a State or non-profit entity that is an eligible

not-for-profit holder but which are now held by a special purpose entity qualify for the higher SAP rate. Second, changes have been made to apply to the special purpose entity used by a not-for-profit holder the same tests that apply directly to the State or non-profit entity.

The final regulations apply without regard to whether a particular special purpose entity is sufficiently remote from the State or non-profit entity to insulate the former from the claims that might be asserted in the bankruptcy of the latter. Similarly, the regulations apply without regard to whether a particular special purpose entity is a "qualifying SPE" under Financial Accounting Standards Board Statement No. 140.

Changes: We have amended the regulations to address a not-for-profit holder's use of a special purpose entity.

Public Service Loan Forgiveness

Most of the comments received by the Department in response to the NPRM pertained to the public service loan forgiveness program. A majority of those comments were from law schools, law students, legal aid centers, clinics, and associations, public interest attorneys and public defenders. The commenters overwhelmingly supported the program because it would provide relief to borrowers who choose charity and other public service and nonprofit employment, and because they believe it will prove to be an important tool for attracting graduates and retaining talented employees in critical jobs that support our society's well-being. The specific comments are discussed below.

Borrower Eligibility

Comment: Some commenters working at nonprofit or governmental organizations noted that the loan forgiveness program became effective on October 1, 2007, and asked that payments made on their loans and service performed before that date be counted toward satisfying the loan forgiveness requirements.

A few commenters who are borrowers of joint FFEL Program consolidation loans asked whether they could reconsolidate that loan either jointly or separately into the Direct Loan program to qualify for the public service loan forgiveness benefit.

A Peace Corps official asked that Peace Corps service be considered qualifying service for public service loan forgiveness and be treated in the same manner as service in full-time AmeriCorps positions, including counting payments made during Peace Corps service as qualifying payments for loan forgiveness. The commenter stated

that even though individuals serving in the Peace Corps are not considered Federal government employees, they are treated as such for certain purposes, such as retirement and under the Federal Employees Compensation Act.

Discussion: The CCRAA establishes October 1, 2007, as the effective date for the beginning of the public service loan forgiveness program and requires that a borrower's qualifying payments be made while the borrower is providing the qualifying full-time service.

Consequently, periods of service or payments made on an eligible loan prior to the October 1, 2007, effective date do not count towards the requirements for loan forgiveness.

The HEA authorizes borrowers to consolidate their FFEL Program loans into the Direct Loan program for the purpose of public service loan forgiveness. However, there is no authority to make new joint consolidation loans in either the FFEL or Direct Loan programs. In taking out a joint consolidation loan, both borrowers become jointly and severally liable for the repayment of the full amount of the loan. There is no statutory authority to allow one of the borrowers to assume the entire joint consolidation debt or for the borrowers to somehow separate the joint consolidation loan into separate individual loans. Therefore, borrowers with joint FFEL consolidation loans cannot become eligible for the public service loan forgiveness program.

The Department agrees with the commenter that individuals serving in the Peace Corps perform valuable public service on behalf of their fellow citizens and that they should be treated like borrowers serving in AmeriCorps positions. However, under the HEA, to qualify for forgiveness, the borrower must be making payments while performing public service. Unlike a borrower serving in a full-time AmeriCorps position, a borrower serving full-time in the Peace Corps is eligible for an economic hardship deferment for the entire period of the borrower's Peace Corps service and has no obligation to make payments. Additionally, the Peace Corps does not provide an educational benefit that the borrower can choose to use to repay title IV student loans, but instead provides an individual leaving Peace Corps service with a lump sum transition allowance. Given these circumstances, the Department has determined that an individual serving in the Peace Corps may meet the loan forgiveness payment requirement in one of two ways: (1) By declining the economic hardship deferment and making scheduled

payments on the loan during the service period; or (2) by making a lump sum payment on the loan from the Peace Corps transition allowance no later than six months after the borrower's receipt of those funds. A lump sum payment on a title IV loan from Peace Corps transition funds will be treated like a payment made from an AmeriCorps borrower's Segal Education Award in determining the number of the borrower's qualifying payments.

Changes: Section 685.219(b) has been amended to include a definition of a Peace Corps position, § 685.219(c)(1)(ii) has been amended to include a reference to a Peace Corps position, and § 685.219(c)(2) has been amended to apply the treatment of lump sum payments to a payment made from Peace Corps transition funds.

Documenting and Maintaining Eligibility

Comment: Many commenters asked the Department to develop a clear and simple method for the borrower, the employer, or both, to determine annually the borrower's eligibility for public service loan forgiveness (i.e., that the borrower's employment was with an eligible employer and that the borrower was paying under an acceptable repayment plan). The commenters stated that they believed strongly that borrowers should not be left in the dark regarding whether they would qualify for loan forgiveness by applying and documenting their eligibility after 10 years of service and repayment. The commenters noted that this approach would require the borrower to retain pay stubs or other supporting documentation of their employment for the entire 10-year period. The commenters believed that this recordkeeping obligation would be too great of a burden to impose on recent graduates. The commenters also believed that ongoing information on the borrower's eligibility is important for the borrower's career and financial decisions. The commenters recommended that the Department create an on-line, password-protected system through which qualifying employers could annually certify the employment of borrower-employees, or otherwise provide a reliable system for borrowers to document, confirm, and track job eligibility. Some of these commenters also asked that we establish a program of employer pre-certification under which the Department would maintain an ongoing list of certified eligible employers for borrower reference. One commenter disagreed with the Department's position in the NPRM that implementing such a system

was an operational rather than a regulatory issue, and asked that a system for annual eligibility verification be reflected in the regulations. Another commenter stated that it was preferable to require a borrower to submit past pay stubs, direct deposit salary documents, or wage and salary statements (W-2s) rather than require the employer to provide some certifying document of the borrower's dates of employment.

Many commenters urged the Department to incorporate the public service loan forgiveness program as a term and condition in the Department's Direct Loan master promissory note (MPN). The commenters believed that making this change to the MPN would prevent Congress from repealing the forgiveness benefit after borrowers have spent years working to meet the eligibility requirements.

Another commenter recommended that the Direct Consolidation Loan application and the public service loan forgiveness application be combined so that no gap exists in the student's ability to consolidate and then pursue public service loan forgiveness.

Other commenters representing participants in the FFEL industry requested that the Department's procedures for eligibility determinations and notification to borrowers who are not eligible for loan forgiveness under this program be spelled out in greater detail consistent with the approach in § 685.216(e)(4).

Discussion: The Department believes that the way in which borrowers apply for and document their eligibility for the public service loan forgiveness benefit is best handled administratively. We assure the commenters that we will continue to examine ways to assist borrowers who are interested in, or already employed in public service, to determine and document their eligibility for the loan forgiveness program.

The Department will develop a form for borrowers to use to apply for the public service loan forgiveness when the borrower believes he or she qualifies. The proposed form will be subject to public comment under the Paperwork Reduction Act of 1995. As with other discharge applications the Department has developed, the form will include all the information the borrower and the borrower's employer need regarding the eligibility criteria, applicable definitions, and procedures for applying for the loan forgiveness benefit. The form will include an employer certification section and instructions regarding supporting documentation that the Department will need to determine the borrower's

eligibility for the forgiveness benefit. The borrower will be able to use this form to collect a certification from his or her employer either annually or at the close of the 120-payment qualifying period. The form will also be used for certification for borrowers who have more than one employer. The Department expects the borrower to collect and retain the necessary records that support the borrower's eligibility for this benefit. This policy is consistent with the general practice in the student loan programs—borrowers are always responsible for collecting and maintaining records to support their receipt of benefits under the programs.

With regard to incorporating a description of the public service loan forgiveness benefit in the MPN, the Department is already taking steps to refer to the program in the MPN and other program documents. However, the MPN will continue to state, as it currently does, that the terms and conditions of the loans are subject to the HEA as it is amended in accordance with the effective date of those amendments. Although there is no history in the program of Congress eliminating or reducing a borrower benefit, the Department does not believe that a reference to the public service loan forgiveness program in the MPN would provide the borrower with a contractual right to the benefit should Congress take action to eliminate that benefit from the HEA as of a particular effective date.

The Department declines to modify the Direct Loan Consolidation Application to include the application for public service loan forgiveness. Unless the borrower is a FFEL borrower, he or she is not required to consolidate to receive the public service loan forgiveness benefit. Additionally, even if a borrower consolidates, the borrower may not be eligible to apply for the loan forgiveness benefit until many years after the consolidation, if at all. The Department agrees that it is appropriate to provide more detail in the regulations, consistent with what is provided for other loan discharges, on the procedures it will follow after determining a borrower's eligibility and when notifying the borrower of his or her ineligibility.

Changes: We have revised § 685.219(e)(3) to specify that if the Secretary determines that the borrower is not eligible for the public service loan forgiveness, the Secretary will notify the borrower of that decision, provide the basis for the denial, and inform the borrower that the Department will resume collection of the loan. The Secretary will grant forbearance on the

loan for any period during which collection activity was suspended while the Secretary was considering the borrower's application and may capitalize any interest that accrued and was not paid during that period.

Definitions

Full-Time

Comment: Some commenters requested that reference to an employer's full-time employment standard in the definition of "full-time" for public service employment be eliminated because it penalizes borrowers whose employers require more than 30 hours per week. Some commenters also requested that we define full-time employment so that individuals are able to count multiple eligible part-time public service jobs toward the full-time requirement and eliminate any conflict that may arise if any of the part-time employers use a different full-time standard.

One commenter asked that the definition be amended to specify that leave taken under a condition covered by the Family and Medical Leave Act of 1993 (FMLA) does not constitute a break or have the effect of reducing the borrower's annual average to below 30 hours per week, or below the employer's full-time standard.

Discussion: The Department understands that some borrowers whose employers have a standard for full-time employment greater than 30 hours per week may believe that they are being unfairly penalized. The Department believes, however, that the forgiveness benefit is intended to acknowledge full-time employment and that it is appropriate to use an employer's standard when an employer has a full-time employment standard.

We agree that a borrower who is working part-time in more than one public service job cannot be held to more than one full-time standard in fulfilling the full-time requirement. We also agree that leave taken under conditions covered by the FMLA should not result in the borrower failing to meet the 30 hours per week annual average or the employer's full-time standard.

Changes: We have revised the definition of full-time in § 685.219(b) to apply the 30 hours per week annual average as the governing full-time standard when a borrower is working in more than one qualifying job and to specify that leave taken for a condition that is a qualifying reason for leave under the FMLA does not count in determining whether a borrower meets the full-time definition.

Public Service Organization

Comment: Some commenters asked that the definition of government employee be clarified to specifically include employees of intergovernmental or public regional agencies, and to include a public primary, secondary, or higher education institution, district, or system.

A few commenters recommended that "public health" be defined in the manner provided in the U.S. Health Code, title 42, chapter 6A, Public Health Service, subchapter XVIII, part E, subsection 1395X to include: Doctors of Medicine and Osteopathy, Doctors of Chiropractic, Doctors of Dental Surgery and Dental Medicine, Doctors of Optometry and Doctors of Podiatric Medicine. The commenters believed that this level of specificity was necessary because the public health sector includes both non-profit entities that have doctors on their staff and for-profit providers such as doctors in private practice.

Several commenters recommended that contract employees who serve organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code should be considered as employees of a public service organization. Another commenter claimed that the proposed regulations improperly excluded employment that is within the statutory definition such as for-profit businesses, private law firms that provide defense for indigents through state funding, and non-profit non-governmental organizations that do not qualify under section 501(c)(3) of the Internal Revenue Code. The commenter stated that the regulations should specify that Interest on Lawyers' Trust Accounts (IOLTA) funding would be considered public funding for purposes of meeting the requirement of being "funded in whole or in part by a local, State, Federal, or Tribal government", and took exception to the exclusion of labor unions from eligibility as without justification if the labor union otherwise meets appropriate standards for a public service organization.

Discussion: As the Department indicated in the preamble to the NPRM (72 FR 37705), the definition of "public service organization" is derived from the statutory definition of "public service job" in section 455(m)(3)(B) of the HEA, and is intended to identify broad categories of eligible jobs rather than define specific jobs under those categories. An intergovernmental or public regional agency would appear to be encompassed under "Federal, State, local, or Tribal government

organization, agency, or entity” depending on its governance and the funding source for salaries. Employees of public and private, non-profit elementary, secondary, and postsecondary schools would be covered either as employees of a government organization, agency, or entity or of a private organization that provides public education. Employees of tribal colleges and universities are specifically listed as eligible in the HEA. Contract workers at these institutions who are not paid by the institution, but are paid by a for-profit company contracted to provide certain services to the institution would not be covered.

As part of the HEOA, Congress recently added a clarifying non-exhaustive list of examples of qualified “public health” jobs to section 455(m)(3)(B) of the HEA. We have incorporated those examples into these final regulations.

Non-profit organizations that do not qualify under section 501(c)(3) of the Internal Revenue Code may nonetheless qualify as a private organization that provides qualifying public services.

We do not believe it is appropriate to make employees of for-profit firms receiving IOLTA funding specifically eligible for the public service loan forgiveness program. These employees are not employees of a government agency and are not likely to work full-time at a public service job.

The Department continues to believe that the term “public sector jobs” does not encompass every job. The nature of the employer and the funding source of salaries are appropriate considerations.

Changes: None.

Tax Status of Forgiven Amounts

Comment: One commenter asked the Department to clarify ambiguities related to the tax status of the amount of loans forgiven under the public service loan forgiveness program.

Discussion: Section 108(f) of the Internal Revenue Code provides that amounts discharged on loans made by a governmental entity can be excluded from the borrower’s income if the discharge was for work “in certain professions for any broad range of employers.” 26 U.S.C. 108(f). The Internal Revenue Service has not issued any determination of whether work that qualifies an individual for public service loan forgiveness under section 455(m) of the HEA would qualify under 26 U.S.C. 108(f), and the Department does not have the legal authority to make such a determination here.

Changes: None.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is “significant” and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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.

Pursuant to the terms of the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is “economically significant” and subject to OMB review under section 3(f)(1) of Executive Order 12866. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

As discussed in the NPRM, these final regulations are needed to implement provisions of the HEA, as amended by the CCRAA, that established a new IBR plan for FFEL and Direct Loan borrowers, revised the conditions under which a FFEL or Direct Loan borrower could qualify for a loan deferment due to economic hardship, changed the terms of a number of military service deferments, created a loan forgiveness program in the Direct Loan Program for borrowers who perform public service, and established a separate special allowance rate formula for not-for-profit loan holders in the FFEL Program. The *Regulatory Impact Analysis* portion of the NPRM discussed areas where the Secretary has exercised limited discretion in implementing the CCRAA provisions.

These final regulations also implement changes made to two of the regulations to reflect changes made by the HEOA. However, the changes only incorporate statutory changes and do not involve any exercise of discretion by the Secretary.

Regulatory Alternatives Considered

A broad range of alternatives to the regulations was considered as part of the negotiated rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the Regulatory Impact Analysis and the Reasons sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, the final regulations reflect statutory amendments included in the HEOA and minor revisions in response to public comments. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Net Budget Impacts

As noted in the NPRM, the CCRAA provisions implemented by these regulations are estimated to have a net budget impact of \$650 million in 2008 and \$9.2 billion over FY 2008–2012. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.) Details on how these estimates were developed are provided in the *Regulatory Impact Analysis* portion of the NPRM.

Assumptions, Limitations, and Data Sources

Because these regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the CCRAA changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used,

including data from the National Student Loan Data System, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the Census Bureau, were also used. No comments or additional data were received related

to the estimates or discussions included in the NPRM.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 2 below, we

have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for the IBR, loan deferment, and loan forgiveness provisions) and from student loan holders to the Federal government (for the SAP provisions).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers	Transfers
Annualized Monetized Transfers	3%	7%.
Federal Government to Student Loan Borrowers	\$1.292 billion	\$1.357 billion.
Federal Government to Student Loan Holders	\$580 million	\$568 million.
Total	\$1.872 billion	\$1.925 billion.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These final regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define these institutions as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered “small entities” under the Regulatory Flexibility Act. Individuals are also not defined as “small entities” under the Regulatory Flexibility Act.

As noted in the NPRM, a significant percentage of the lenders and schools participating in the Federal student loan programs meet the definition of “small entities.” While these lenders and schools fall within the SBA size guidelines, the final regulations do not impose significant new costs on these entities.

In the NPRM the Secretary invited comments from small institutions as to whether they believe the proposed regulations would have a significant economic impact on them and, if so, requests evidence to support that belief. No comments or data were received.

Paperwork Reduction Act of 1995

Sections 674.34, 682.205, 682.209, 682.210, 682.211, 682.215, 682.302, 685.204, 685.205, 685.219, 685.220, and 685.221 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Sections 674.34(h)–(i), 682.210(t)–(u), and 685.204(e)–(f)—Deferment of Repayment—Federal Perkins Loan, NDSLs, Defense Loans, FFEL, and Direct Loans.

The final regulations amend the provisions related to the military service deferment and the post-active duty student deferment in the Federal Perkins, FFEL, and Direct Loan Programs.

The final regulations regarding the post-active duty student deferment would result in an increase in the burden hours associated with the current Federal Perkins/FFEL/Direct Loan military deferment request form cleared under OMB Control Number 1845–0080. The current military deferment request form covers only the military service deferment. The form will be revised to cover both the military service deferment and the post-active duty student deferment. The Department expects to submit a revised deferment request form for clearance by November 2008.

Section 682.205(h)—Disclosure Requirements for Lenders

These final regulations provide that, at the time of offering a borrower a loan and at the time of offering a borrower

repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of the income-sensitive and the IBR repayment plans, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans. This information may be provided in a separate notice or as part of the other disclosures required by this section.

The Department has determined that this modification to the current notification requirements would not increase the burden associated with § 682.205 and the associated collection, OMB Control No. 1845–0020.

Section 682.209(a)—Repayment of a Loan

The final regulations would add the IBR plan as a repayment option for FFEL borrowers and require lenders to take certain actions when a borrower fails to select a repayment plan within 45 days after being notified by the lender to choose a repayment schedule.

The Department has determined that this modification to the current notification requirements would not increase the burden associated with § 682.209 and the associated collection, OMB Control No. 1845–0020.

Section 682.211(f)—Forbearance

The final regulations would provide for a period of forbearance, not to exceed 60 days, necessary for the lender to collect and process documentation supporting the borrower’s eligibility for loan forgiveness under the IBR plan. The lender must notify the borrower

that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

The addition of this new type of forbearance under the IBR plan is estimated to increase the burden hours for lenders and guaranty agencies by 31,414 hours under OMB Control Number 1845-0020. (**Note:** This is an administrative forbearance and does not require an OMB-approved form.)

Section 682.215—Income-Based Repayment Plan

The final regulations provide that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. Under this plan, the borrower's aggregate monthly loan payments would be limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the IBR plan, but the loan holder must recalculate the borrower's monthly payment amount. If the borrower no longer wishes to pay under the IBR plan, the borrower must pay under a standard repayment plan as calculated by the loan holder.

The final regulations provide that a loan holder would require the borrower, in order to establish his or her eligibility for the IBR plan, to provide written consent to the disclosure of AGI and other tax return information by the IRS to the loan holder. The borrower also would be required to annually certify his or her family size; otherwise the loan holder would assume a family size of one. To determine whether a borrower qualifies for loan forgiveness after 25 years, the loan holder must make a determination that the borrower has established eligibility for loan forgiveness by making payments for 25 years, or, that, through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments. The loan holder is required, no later than 60 days after it makes the determination that the borrower is eligible for loan forgiveness, to request payment from the guaranty agency. Within 45 days of receiving the loan holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness and must notify the loan holder. If the guaranty agency determines that the borrower is eligible for loan forgiveness,

it must pay the loan holder within the same 45-day period. The holder must notify the borrower within 30 days of being notified by the guaranty agency of its determination on the borrower's eligibility.

We estimate that the final regulations will increase burden for borrowers, lenders and guaranty agencies by 185,778 hours, under new OMB Control Number 1845-0086.

Section 682.302(f)—Eligible Not-for-Profit Holder

The final regulations would require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for-profit designation is being certified. For an entity establishing non-profit status under section 150(d) of the Internal Revenue Code, the submission must include copies of the requests of the State or political subdivision or subdivisions thereof, or requirements described in section 150(d) of the Internal Revenue Code, and the CEO's additional certification that the entity has not elected to cease its status as a qualified scholarship funding corporation. A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, must be submitted with supporting documentation that shows that the State or non-profit entity is a constituted State entity by operation of specific State law, has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation, and is incorporated under State law as a not-for-profit organization, or is an entity described in section 501(c)(3) of the Internal Revenue Code, or has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

Under the final regulations, once an entity has been approved as an eligible not-for-profit holder, the entity must provide to the Secretary an annual certification on the State or non-profit entity's letterhead signed by the CEO, which includes the name and lender identification number(s) of the entities

for which designation is being recertified. The annual certification must state that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary and that it continues to satisfy the requirements of an eligible not-for-profit holder either in its own right or through a trust agreement with an eligible lender trustee. A copy of its IRS Form 990—Return of Organization Exempt From Income Tax, if applicable, must be submitted at the same time the entity files that return with the IRS as a part of the annual certification.

Within 10 days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must submit details of the change to the Secretary.

We estimate that the final regulations will increase burden for States, non-profit entities, and eligible lender trustees by 105 hours in the new OMB Control Number 1845-0085.

Section 685.205(a)—Forbearance

The final regulations would provide for loan forbearance for a borrower who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days.

The addition of a new type of forbearance will increase the burden hours associated with OMB Control Number 1845-0031, the Direct Loan Program General Forbearance Request form. The Department will submit a full collections package with a revised form by December 2008.

Section 685.219—Public Service Loan Forgiveness

The Public Service Loan Forgiveness Program created by the CCRAA is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their eligible Direct loans after they satisfy the public service and loan repayment requirements of this section.

The burden associated with the final regulations for this program will be reported in the paperwork clearance package for a new public service loan forgiveness application form in the new OMB Control Number 1845-XXX3 that the Department will develop.

Section 685.220—Consolidation

The final regulations permit a borrower to consolidate a FFEL Consolidation Loan into the Federal Direct Loan Program for the purpose of participating in the Public Service Loan Forgiveness Program.

We estimate that the expected increase in the number of FFEL Program borrowers who wish to consolidate into the Federal Direct Loan Program for the purpose of using the public loan forgiveness program will increase the burden hours associated with OMB Control Number 1845–0053 (Direct Consolidation Loan Application and Promissory Note). The Department will submit an OMB 83–C indicating the increased burden associated with this collection by October 2008.

Section 685.221—Income-Based Repayment Plan

The final regulations provide that a borrower may elect the IBR plan only if the borrower has a partial financial hardship. Under this plan, the borrower's aggregate monthly loan payments would be limited to no more than 15 percent of the amount by which

the borrower's AGI exceeds 150 percent of the poverty guideline for the borrower's family size, divided by 12. If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the IBR plan, but the Secretary must recalculate the borrower's monthly payment amount. If the borrower no longer wishes to pay under the IBR plan, the borrower must pay under the standard repayment plan as calculated by the Secretary.

The final regulations provide that the Secretary requires a borrower to establish his or her eligibility for the IBR plan by providing written consent to the disclosure of AGI and other tax return information by the IRS to the Secretary. The borrower annually certifies his or her family size; otherwise the Secretary assumes a family size of one. To qualify for loan forgiveness after 25 years, a determination must be made that the borrower has established eligibility for loan forgiveness by making payments for 25 years, or that through a combination of monthly payments and economic hardship deferments, the

borrower has made the equivalent of 25 years of payments.

The Department plans to revise the current collection approved under OMB Control Number 1845–0017, the Direct Loan Program Income Contingent Repayment Plan Consent to Disclosure of Tax Information, so that it may also be used to collect the income information needed for the Income-Based Repayment Plan. The resulting increased burden associated with OMB Control Number 1845–0017 will be reported in the paperwork clearance package for the revised form. The Department expects to submit the revised form for clearance by December 2008.

Collection of Information

Consistent with the discussion in this Paperwork Reduction Act of 1995 section, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections the Department has submitted, or will submit, to OMB for approval and public comment under the Paperwork Reduction Act of 1995.

Regulatory section	Information collection	Collection
674.34, 682.210, and 685.204.	This final regulation incorporates previous interpretive guidance related to the military service deferment and the active duty student deferment.	OMB 1845–0080. This is a revision of an existing collection. A separate 60-day Federal Register notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by November, 2008.
682.205	This final regulation establishes the disclosure requirements for lenders.	OMB 1845–0020. There is no change in burden.
682.209	This final regulation adds, and makes available, the income-based repayment plan to FFEL borrowers.	OMB 1845–0020. There is no change in burden.
682.211	This final regulation establishes the timeframe that a lender has to collect and process required documentation.	OMB 1845–0020. This is a revision of an existing collection which is being submitted to OMB with this final regulation.
682.215	This final regulation provides for the collection of a borrower's income information from the IRS and an annual certification from a borrower who elects the income-based repayment plan.	OMB 1845–0086. This is a new collection which is being submitted to OMB with this final regulation.
682.302	This final regulation requires the submission of documentation by a State, a non-profit entity, or an eligible lender trustee to the Secretary to establish eligibility for not-for-profit holder status.	OMB 1845–0085. This is a new collection which is being submitted to OMB with this final regulation.
685.205	This final regulation provides for the collection of information to determine if a Direct loan borrower who is not eligible for a post-active duty student loan deferment may receive a forbearance.	OMB 1845–0031. This will be a revision of an existing collection. A separate 60-day Federal Register notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by December, 2008.
685.219	This final regulation establishes a new Public Service Loan Forgiveness program.	OMB 1845–XXX3. This will be a new collection. A separate 60-day Federal Register notice will be published to solicit comment on this form once it is developed.
685.220	This final regulation provides for the consolidation of FFEL loans into Direct Consolidation loans for the purpose of using the Public Service Loan Forgiveness program.	OMB 1845–0053. This will increase the burden associated with an existing collection. The increase will be reported on OMB Form 83–C by October, 2008.
685.221	This final regulation provides for the collection of the borrower's income information from the IRS and an annual certification from the borrower who elects the income-based repayment plan.	OMB 1845–0017. This will be a revision of an existing collection. A separate 60-day Federal Register notice will be published to solicit comment on the revised form once it is developed. The revised form will be submitted for clearance by December, 2008.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, and Vocational education.

Dated: October 15, 2008.

Margaret Spellings,
Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

■ 2. Section 674.34 is amended by:

- A. In the introductory text of paragraph (e), removing the reference “(e)(6)” from the cross-reference in the parenthetical phrase that appears after the word “time” and adding, in its place, the reference “(e)(5)”, and removing the words “through (e)(6)” and adding, in their place, the words “through (e)(5)”.
- B. In paragraph (e)(1), removing the word “FDSL” and adding, in its place, “Federal Direct Loan Program”, and adding the word “the” before the words “FFEL programs”.
- C. In paragraph (e)(3)(ii), removing the words “poverty line applicable to the borrower’s family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act” and adding, in its place, the words “poverty guideline applicable to the borrower’s family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States”.
- D. Removing paragraph (e)(5).
- E. Redesignating paragraphs (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) as paragraphs (e)(5), (e)(6), (e)(7), (e)(8), and (e)(9) respectively.
- F. In newly redesignated paragraph (e)(6), removing the words “or (e)(5)”.
- G. In newly redesignated paragraph (e)(7), removing the words “,” or (e)(5)”, removing the punctuation “,” after the reference “(e)(3)”, and adding the word “and” after the reference “(e)(3)”.
- H. In newly redesignated paragraph (e)(8), adding “(i)” after the number “(8)”, removing the word “paragraphs” and adding in its place “paragraph”, and removing the words “and (e)(5)”.
- I. Adding new paragraph (e)(8)(ii).
- J. In newly redesignated paragraph (e)(9), removing the words “and (e)(5)”.
- K. In paragraph (h)(1), adding the heading “Military service deferment” before the paragraph designation “(1)” and adding the punctuation “,” after the word “principal” and after the word “accrue”.
- L. In paragraph (h)(4) introductory text, removing the word “section” and adding, in its place, the word “paragraph”.
- M. Revising paragraph (h)(6).
- N. Adding new paragraph (h)(7).
- O. Adding a heading to paragraph (i).
- P. In paragraph (i)(1), revising the introductory text.
- Q. In paragraph (i)(1)(ii), adding the words “,” on at least a half-time basis,” after the word “enrolled”.

- R. Revising paragraph (i)(2).
 - S. In paragraph (i)(3), adding the words “,” on at least a half-time basis,” after the word “status” each time it appears.
 - T. Adding new paragraph (i)(4).
 - U. In paragraph (j), removing the words “paragraph (j)” and adding, in their place, the words “paragraph (k)”.
- The revisions and additions read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs, and Defense loans.

* * * * *

(e) * * *

(8)(i) * * *

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower’s family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

* * * * *

(h) * * *

(6) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(7) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower’s representative.

(i) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower of a Federal Perkins loan, an NDSL, or a Defense loan serving on active duty military service on that date, or who begins serving on or after that date, need not pay principal, and interest does not accrue for up to 13 months following the conclusion of the borrower’s active duty military service and initial grace period if—

* * *

(2) As used in paragraph (i)(1) of this section “Active duty” means active duty as defined in section 101(d)(1) of title 10, United States Code, for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which the Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which the Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment under both paragraphs (h) and (i) of this section, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2 unless otherwise noted.

■ 4. Section 682.201 is amended by:

■ A. In paragraph (e)(3), removing the word “and” at the end of the paragraph.

■ B. In paragraph (e)(4), removing the punctuation “.” at the end of the paragraph and adding, in its place, the words, “; and”.

■ C. Adding a new paragraph (e)(5) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(e) * * *

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using the Public Service Loan Forgiveness Program.

■ 5. Section 682.205 is amended by:

■ A. Revising the heading to paragraph (h).

■ B. Revising paragraph (h)(1).

The revisions read as follows:

§ 682.205 Disclosure requirements for lenders.

* * * * *

(h) Notice of availability of income-sensitive and income-based repayment options.

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

* * * * *

■ 6. Section 682.209 is amended by:

■ A. Revising paragraph (a)(6)(iii).

■ B. Revising paragraph (a)(6)(iv).

■ C. Revising paragraph (a)(6)(v).

■ D. Redesignating paragraphs (a)(6)(x) and (a)(6)(xi) as (a)(6)(xi) and (a)(6)(xii), respectively.

■ E. Adding a new paragraph (a)(6)(x).

■ F. In newly redesignated paragraph (a)(6)(xi), adding the words “, or at any time in the case of a borrower in an income-based repayment plan” immediately after the word “annually”.

■ G. In paragraph (a)(8), adding the words “, except in the case of payments made under an income-based repayment plan.” immediately after the words “five dollars” the first time those words appear.

■ H. In paragraph (b)(1), removing the word “The” at the beginning of the sentence and adding, in its place, the words “Except in the case of payments made under an income-based repayment plan, the”.

■ I. In paragraph (b)(2)(ii), in the second sentence, removing the words “borrower coupon book” and adding, in their place, “borrower’s coupon book”.

■ J. In paragraph (c)(1)(i), removing the word “or” the first time it appears and

adding the words “, or income-based” immediately after the word “extended”.

The revisions and additions read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(a) * * *

(6) * * *

(iii) Not more than six months prior to the date that the borrower’s first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule.

(iv) Except in the case of an income-based repayment schedule, the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower—

(A) Does not select an income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule within 45 days after being notified by the lender to choose a repayment schedule;

(B) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(viii)(C) of this section within the time period specified by the lender; or

(C) Chooses an income-based repayment schedule, but does not provide the income documentation requested by the lender under § 682.215(e)(1)(i) within the time period specified by the lender.

* * * * *

(x) Under an income-based repayment schedule, the borrower repays the loan in accordance with § 682.215.

* * * * *

■ 7. Section 682.210 is amended by:

■ A. Revising paragraph (s)(6)(iii)(B).

■ B. Removing paragraphs (s)(6)(iv), (s)(6)(v), and (s)(6)(vii).

■ C. Redesignating paragraphs (s)(6)(vi), (s)(6)(viii), (s)(6)(ix), (s)(6)(x) and (s)(6)(xi) as paragraphs (s)(6)(iv), (s)(6)(v), (s)(6)(vi), (s)(6)(vii), (s)(6)(viii) respectively.

■ D. In newly redesignated (s)(6)(v), removing the word “paragraphs” and adding in its place “paragraph”, and removing the words “through (v)”.

■ E. In newly redesignated (s)(6)(vi), removing the word “paragraphs” and adding in its place “paragraph”, and removing the words “through (v)”.

■ F. Adding a new paragraph (s)(6)(ix).

■ G. In paragraph (t)(1), removing the word “an” and adding, in its place, the word “a” and by removing the word “loans” and adding, in its place, the word “loan”.

■ H. In paragraph (t)(2), removing the word “The” at the beginning of the sentence, and adding, in its place, the words “For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the” and by removing the words “for the service” and adding, in their place, the words “for each period of service”.

■ I. In paragraph (t)(6), removing the word “section” and adding, in its place, the word “paragraph”.

■ J. Adding new paragraph (t)(9).

■ K. Revising the heading of paragraph (u) and the introductory text to paragraph (u)(1).

■ L. In paragraph (u)(1)(ii), adding the words “, on at least a half-time basis,” after the word “enrolled”.

■ M. Revising paragraph (u)(2).

■ N. In paragraph (u)(3), adding the words “, on at least a half-time basis,” after the word “status” each time it appears.

■ O. Redesignating paragraph (u)(4) as (u)(5).

■ P. Adding new paragraph (u)(4).

The revisions and additions read as follows:

§ 682.210 Deferment.

* * * * *

(s) * * *
(6) * * *
(iii) * * *

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

* * * * *

(ix) For purposes of paragraph (s)(6)(iii)(B) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will

continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

* * * * *

(t) * * *

(9) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower's representative.

(u) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower who receives a FFEL Program loan and is serving on active duty on that date, or begins serving on or after that date, is entitled to receive a post-active duty student deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if—* * *

(2) As used in paragraph (u)(1) of this section, “active duty” means active duty as defined in section 101(d)(1) of title 10, United States Code for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (u)(2)(i) of this section or full-time National Guard duty under paragraph (u)(2)(ii) of this section.

* * * * *

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

* * * * *

■ 8. Section 682.211 is amended by:

■ A. Adding a new paragraph (f)(13).

■ B. Adding a new paragraph (f)(14).

■ C. In paragraph (h)(2)(ii)(C), removing the punctuation at the end and adding, in its place, “; and”.

■ D. Adding new paragraph (h)(2)(iii).

The additions read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan.

* * * * *

(h) * * *

(2) * * *

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in § 682.210(u)(2)(i) and (ii) for a period of more than 30 consecutive days, beginning—

(A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or

(B) On the day after the borrower ceases at least half-time enrollment, for a FFEL loan in repayment.

* * * * *

■ 9. Redesignate § 682.215 as § 682.216.

■ 10. Add a new § 682.215 to read as follows:

§ 682.215 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a

parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and
(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Repayment plan.* (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

(i) The total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding

principal amount of eligible loans that are held by the loan holder;

(ii) The calculated amount under paragraph (b)(1) or (b)(1)(i) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iii) The calculated amount under paragraph (b)(1) or (b)(1)(i) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under an income-based repayment plan. Each loan holder must apply the payment calculation rules in paragraphs (b)(1)(ii) and (iii) of this section to loans they hold.

(3) If a borrower elects an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

(4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on each loan repaid under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.

(5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) If the borrower's monthly payment amount is not sufficient to pay any principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under an income-based repayment plan is calculated on the

principal balance of the loan and any accrued interest unpaid by the borrower.

(8) The repayment period for a borrower under an income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* (1) The loan holder shall apply any payment made under an income-based repayment plan in the following order:

(i) Accrued interest.
(ii) Collection costs.
(iii) Late charges.
(iv) Loan principal.

(2) The borrower may prepay the whole or any part of a loan at any time without penalty.

(3) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of § 682.209(b)(2)(ii).

(4) If the prepayment amount exceeds the monthly payment amount of \$0.00 under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder may require the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the

borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the applicable repayment period remaining specified in § 682.209(h)(2) for the total amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) *Eligibility documentation and verification.* (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the loan holder. The borrower provides consent by signing a consent form and returning it to the loan holder;

(B) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the loan holder may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) The loan holder designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period—

(i) Made reduced monthly payments under a partial financial hardship as provided under paragraph (b)(1) of this section. Monthly payments of \$0.00 qualify as reduced monthly payments as provided in paragraph (b)(1)(ii) of this section;

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan

described in § 682.209(a)(6)(vi) with a 10-year repayment period;

(iv) Made monthly payments under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan; or

(v) Received an economic hardship deferment on eligible FFEL loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary repays any outstanding balance of principal and accrued interest on FFEL loans for which the borrower qualifies for forgiveness if the guaranty agency determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly amount of \$0.00 as provided in paragraph (b)(1)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period; or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) For a borrower who has a FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or

(iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in (f)(1) after qualifying for the income-based repayment plan.

(4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.

(5) A borrower repaying a defaulted loan is not considered to be repaying under a qualifying repayment plan for the purpose of loan forgiveness, and any payments made on a defaulted loan are not counted toward the 25-year forgiveness period.

(g) *Loan forgiveness processing and payment.* (1) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness under paragraph (f) of this section, the loan holder must request payment from the guaranty agency.

(2) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(1) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(3)(i) of this section, pay the holder the amount of the forgiveness.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days, inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans for which income-based forgiveness was requested is satisfied. The lender must also provide the borrower with information on the required handling of the forgiveness amount.

(5)(i) The holder must apply the proceeds of the income-based repayment loan forgiveness amount to satisfy the outstanding balance on those

loans for which income-based forgiveness was requested; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(6) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).

(7) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

(Authority: 20 U.S.C. 1098e)

■ 11. Section 682.300 is amended by:

■ A. In paragraph (b)(1)(ii), removing the word “and” at the end of the sentence.

■ B. In paragraph (b)(1)(iii), removing the punctuation “.” and adding, in its place “; and” at the end of the sentence.

■ C. Adding a new paragraph (b)(1)(iv).

■ D. In paragraph (b)(2)(viii), removing the word “or” at the end of the sentence.

■ E. In paragraph (b)(2)(ix), removing the punctuation “.” and adding in its place “; or” at the end of the sentence.

■ F. Adding a new paragraph (b)(2)(x).

The additions read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

* * * * *

(b) * * *

(1) * * *

(iv) During a period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount under the plan is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

* * * * *

(2) * * *

(x) The date the borrower's payment under the income-based repayment plan is sufficient to pay the accrued interest on the borrower's loan or the qualifying

portion of the borrower's Consolidation Loan.

* * * * *

■ 12. Section 682.302 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (e)(4), removing “(e)(5)” and adding, in its place, “(e)(5) or (f)”.

■ C. Revising the introductory text of paragraph (f).

■ D. Revising paragraph (f)(3).

The revisions read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section. Special allowance is also paid on the unpaid accrued interest of a loan covered by § 682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero.

* * * * *

(f) *Special allowance rates for loans made on or after October 1, 2007.* With respect to any loan for which the first disbursement of principal is made on or after October 1, 2007, other than a loan described in paragraph (e)(5) of this section, the special allowance rate for an eligible loan made during a 3-month period is calculated according to the formulas described in paragraphs (f)(1) and (f)(2) of this section.

* * * * *

(3) *Eligible Not-for-Profit Holder.* (i) For purposes of this section, the term “eligible not-for-profit holder” means an eligible lender under section 435(d) of the Act (except an eligible institution) that requests special allowance payments from the Secretary and that is—

(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103–1, or section 144(b) of the Internal Revenue Code of 1986;

(B) An entity described in section 150(d)(2) of the Internal Revenue Code of 1986 that has not made the election described in section 150(d)(3) of that Code;

(C) An entity described in section 501(c)(3) of the Internal Revenue Code of 1986; or

(D) A trustee acting as an eligible lender on behalf of an entity that is not an eligible institution and that is a State

or non-profit entity or a special purpose entity for a State or non-profit entity.

(ii) For purposes of paragraph (f)(3) of this section—

(A) The term “State or non-profit entity” means an entity described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, regardless of whether such entity is an eligible lender under section 435(d) of that Act.

(B) The term “special purpose entity” means an entity established for the limited purpose of financing the acquisition of loans from or at the direction of a State or non-profit entity, or servicing and collecting such loans, and that is—

(1) An entity established by such State or non-profit entity, or

(2) An entity established by an entity described in paragraph (f)(3)(ii)(B)(1) of this section.

(C) A special purpose entity is a “related special purpose entity” with respect to a State or non-profit entity if it holds any interest in loans acquired from or at the direction of that State or non-profit entity or from a special purpose entity established by that State or non-profit entity.

(iii) An entity that otherwise qualifies under paragraph (f)(3)(i) of this section shall not be considered an eligible not-for-profit holder unless such entity—

(A) Was a State or non-profit entity and an eligible lender under section 435(d) of the Act, other than a school lender, and on or before September 27, 2007 had made or acquired a FFEL loan, unless the State waives this requirement under paragraph (f)(3)(iv) of this section; or

(B) Is acting as an eligible lender trustee on behalf of a State or non-profit entity that was the sole beneficial owner of a loan eligible for a special allowance payment on September 27, 2007.

(iv) Subject to the provisions of section 435(d)(1)(D) of the Act, a State may waive the requirement of paragraph (f)(3)(iii)(A) of this section to identify a new eligible not-for-profit holder pursuant to a written application filed in accordance with paragraph (f)(3)(x) of this section, for the purposes of carrying out a public purpose of the State, except that a State may not designate a trustee for this purpose.

(v) A State or non-profit entity, and a trustee to the extent acting on behalf of such an entity or its related special purpose entity, shall not be an eligible not-for-profit holder if the State or non-profit entity or its related special purpose entity is owned or controlled, in whole or in part, by a for-profit entity. For purposes of this paragraph, a for-profit entity has ownership and

control of a State or non-profit entity, or its related special purpose entity, if—

(A) The for-profit entity is a member or shareholder of a State or non-profit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the State or non-profit entity or its special purpose entity;

(B) The for-profit entity employs or appoints individuals that together constitute a majority of the State, non-profit, or special purpose entity's board of trustees or directors, or a majority of such board's audit committee, executive committee, or compensation committee; or

(C) For a State, non-profit, or special purpose entity that has no board of trustees or directors and associated committees of such, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials, unless the Secretary determines that the particular authority to approve such decisions is not likely to affect the integrity of those decisions.

(vi) For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity or its related special purpose entity, if it possesses directly, or represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity or its related special purpose entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in § 600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) "Beneficial owner" (including "beneficial ownership" and "owner of a beneficial interest") means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from the loan, subject to any rights

granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) "Sole owner" means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(vii)(A) No State or non-profit entity, and no trustee to the extent acting on behalf of such a State or non-profit entity or its related special purpose entity, shall be an eligible not-for-profit holder with respect to any loan or income from any loan on which payment is claimed at the rate established under paragraph (f)(2) of this section, unless such State or non-profit entity or its related special purpose entity is the sole owner of the beneficial interest in such loan and the income from such loan.

(B) A State or non-profit entity that had sole ownership of the beneficial interest in a loan and the income from such loan is considered to retain that sole ownership for purposes of paragraph (f)(3)(vii)(A) of this section if such entity transferred beneficial interest in the loan to its related special purpose entity and no party other than that State or non-profit entity or its related special purpose entity owns any beneficial interest or residual ownership interest in the loan or income from the loan.

(viii)(A) A trustee described in paragraph (f)(3)(i)(D) of this section shall not receive compensation as consideration for acting as an eligible lender on behalf of a State or non-profit entity or its related special purpose entity in excess of reasonable and customary fees paid for providing the particular service or services that the trustee undertakes to provide to such entity.

(B) Fees are reasonable and customary, for purposes of this paragraph (f)(3)(viii), if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity or its related special purpose entity that are not eligible to receive special allowance at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the

State or non-profit entity that the Secretary considers reliable.

(C) Loans owned by the State or non-profit entity or a related special purpose entity for which the trustee receives fees in excess of the amount permitted by paragraph (f)(3)(viii) of this section cease to qualify for a special allowance payment at the rate prescribed under paragraph (f)(2) of this section.

(ix) For purposes of paragraph (f)(3) of this section, if a State or non-profit entity, its related special purpose entity, or a trustee acting on behalf of any of these entities, grants a security interest in, or otherwise pledges as collateral, a loan, or the income from a loan, to secure a debt obligation for which such State or non-profit entity, or its related special purpose entity, is the issuer of that debt obligation, none of these entities shall, by such action—

(A) Be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(B) Lose its status as the sole owner of a beneficial interest in a loan and the income from a loan.

(x) *Not-for-Profit Holder Eligibility Determination.* A State or non-profit entity that seeks to qualify as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(1) States the basis upon which the entity qualifies as a State or non-profit entity;

(2) Includes documentation establishing its status as a State or non-profit entity;

(3) Includes the name and lender identification number(s) of the entities for which designation is being certified;

(4) Includes the name of any related special purpose entities that hold any interest in any loan on which special allowance is claimed under paragraph (f)(2) of this section, describes the role of such entity with respect to the loans, and provides with respect to that entity the certifications and documentation described in paragraph (f)(3)(x)(A) and (B) of this section; and

(5) For an entity establishing status under section 150(d) of the Internal Revenue Code of 1986, includes copies of the requests of the State or political subdivision or subdivisions thereof or requirements described in section 150(d)(2) of the Internal Revenue Code and the CEO's additional certification that the entity has not elected under section 150(d)(3) of the Internal Revenue Code to cease its status as a

qualified scholarship funding corporation.

(B) A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, with supporting documentation that shows that the State or non-profit entity—

(1) Is constituted a State entity by operation of specific State law;

(2) Has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation under section 150(d) of the Internal Revenue Code, has not made the election described under section 150(d)(3) of the Internal Revenue Code, and is incorporated under State law as a not-for-profit organization;

(3) Is incorporated under State law as a not-for-profit organization or is an entity described in section 503(c)(3) of the Internal Revenue Code; or

(4) Has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

(xi) *Annual Certification by Eligible Not-for-Profit Holder.* A State or non-profit entity that seeks to retain its eligibility as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must annually provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(1) Includes the name and lender identification number(s) of the entities for which designation is being recertified;

(2) States that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary, or, if it has altered its status, describes any such alterations; and

(3) States that the State or non-profit entity continues to satisfy the requirements of an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee; and

(B) A copy of its IRS Form 990, if applicable, and that of any related special purpose entity that holds an interest in loans on which it seeks to claim special allowance at the rate provided under paragraph (f)(2) of this section, at the same time these returns are filed with the Internal Revenue Service.

(xii) *Not-for-Profit Holder Change of Status.* Within 10 business days of becoming aware of the occurrence of a

change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must—

(A) Submit details of the change to the Secretary; and

(B) Cease billing for special allowance at the rate established under paragraph (f)(2) of this section for the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section to the date of the Secretary's determination that such entity has not lost its eligibility as a result of such change; provided, however, that in the quarter following the Secretary's determination that such eligible not-for-profit holder has not lost its eligibility, the eligible not-for-profit holder may submit a billing for special allowance during the period from the date of the change to the date of the Secretary's determination equal to the difference between special allowance at the rate established under paragraph (f)(2) of this section and the amount it actually billed at the rate established under paragraph (f)(1) of this section.

(xiii) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

* * * * *

■ 13. Section 682.304 is amended by:

■ A. Redesignating paragraph (d)(2) as paragraph (d)(3).

■ B. Adding a new paragraph (d)(2).

■ C. In newly designated paragraph (d)(3), removing the words “paragraph (d)(1)” and adding, in their place, the words “paragraphs (d)(1) and (2)”.

The addition reads as follows:

§ 682.304 Method of computing interest benefits and special allowance.

* * * * *

(d) * * *

(2) To compute the average daily balance of unpaid accrued interest for purposes of special allowance on loans covered by § 682.215(b)(7), the lender adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily

balance for the quarter for qualifying loans at the applicable interest rate.

* * * * *

■ 14. Section 682.405 is amended by revising paragraph (b)(4) to read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(4) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

* * * * *

§ 682.411 [Amended]

■ 15. Section 682.411 is amended, in paragraph (d)(1), by adding the words “, income-based repayment” immediately after the words “income-sensitive repayment”.

§ 682.604 [Amended]

■ 16. Section 682.604 is amended by:

■ A. In paragraph (g)(2)(ii), removing the words “and income-sensitive” and adding, in their place, the words “income sensitive, and income-based”.

■ B. In paragraph (g)(2)(v), adding the words “forgiveness or” immediately after the words “full or partial”, and adding the words “, including forgiveness or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program” immediately after the words “of a loan”.

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■ 17. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a, *et seq.*, unless otherwise noted.

■ 18. Section 685.204 is amended by:

■ A. Adding a heading to paragraph (e).

■ B. In paragraph (e)(2), removing the word “The” and adding, in its place, the words “For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the” before the word “deferment” and by adding the words “each period of”

before the words “the service described”.

■ C. In paragraph (e)(6) introductory text, removing the word “section” and adding in its place the word “paragraph”.

■ D. Adding a new paragraph (e)(7).

■ E. In paragraph (f), adding the heading “Post-active duty student deferment” before the paragraph designation “(1)”.

■ F. In paragraph (f)(1)(ii), adding the words “on at least a half-time basis” after the word “enrolled”.

■ G. Revising paragraph (f)(2).

■ H. In paragraph (f)(3), adding the words “on at least a half-time basis” after the word “status” each time it appears and the words “grace period or the” before the words “13-month”.

■ I. Adding new paragraph (f)(4).

■ J. In paragraph (h)(1), removing the word “granted”.

The additions and revision read as follows:

§ 685.204 Deferment.

* * * * *

(e) *Military service deferment.*

* * *

(7) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower's representative.

(f) *Post-active duty student deferment.*

* * * * *

(2) As used in paragraph (f)(1) of this section, “Active Duty” means active duty as defined in section 101(d)(1) of title 10, United States Code, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (f)(2)(i) of this section

or full-time National Guard duty under paragraph (f)(2)(ii) of this section.

* * * * *

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization deferment period and the 13-month post-active duty student deferment period apply concurrently.

* * * * *

■ 19. Section 685.205 is amended by adding a new paragraph (a)(7) to read as follows:

§ 685.205 Forbearance.

* * * * *

(a) * * *

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning—

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct Unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

* * * * *

■ 20. Section 685.208 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (m).

The revisions and addition read as follows:

§ 685.208 Repayment plans.

(a) *General.* (1) Borrowers who entered repayment before July 1, 2006.

(i) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (d), (f), (k), and (m) of this section, respectively.

(ii) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (d), and (f) of this section, respectively.

(2) *Borrowers entering repayment on or after July 1, 2006.* (i) A borrower may repay a Direct Subsidized Loan or a Direct Unsubsidized Loan under the standard repayment plan, the extended repayment plan, the graduated

repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(ii)(A) A Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income-contingent repayment plan, or the income-based repayment plan in accordance with paragraphs (b), (e), (g), (k), and (m) of this section, respectively.

(B) A Direct PLUS Loan that was made to a parent borrower may be repaid under the standard repayment plan, the extended repayment plan, or the graduated repayment plan, in accordance with paragraphs (b), (e), and (g) of this section, respectively.

(iii) A borrower may repay a Direct Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or, unless the Direct Consolidation Loan repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan, the income-based repayment plan, in accordance with paragraphs (c), (e), (h), (k), and (m) of this section, respectively. A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may not be repaid under the income-based repayment plan.

(iv) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income contingent repayment plan, the income-based repayment plan, or an alternative repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (l) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under the income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(5) Except as provided in § 685.209 and § 685.221 for the income contingent

or income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

* * * * *

(m) *Income-based repayment plan.* (1) Under this repayment plan, the required monthly payment for a borrower who has a partial financial hardship is limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The Secretary determines annually whether the borrower continues to qualify for this reduced monthly payment based on the amount of the borrower's eligible loans, AGI, and poverty guideline.

(2) The specific provisions governing the income-based repayment plan are in § 685.221.

■ 21. Section 685.209 is amended by revising paragraph (c)(4) to read as follows:

§ 685.209 Income contingent repayment plan.

* * * * *

(c) * * *

(4) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes—

(A) Periods in which the borrower makes payments under the income-contingent repayment plan on loans that are not in default;

(B) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in § 685.221(d)(1)(i);

(C) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-based repayment plan as provided in § 685.221(d)(2);

(D) Periods in which the borrower makes payments under the standard repayment plan described in § 685.208(b);

(E) For borrowers who entered repayment before October 1, 2007, and if the repayment period is not more than 12 years, periods in which the borrower makes monthly payments under the extended repayment plans described in § 685.208(d) and (e), or the standard repayment plan described in § 685.208(c);

(F) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment

plan that are not less than the amount required under the standard repayment plan described in § 685.208(b); or

(G) Periods of economic hardship deferment after October 1, 2007.

* * * * *

■ 22. Section 685.210 is amended by revising paragraph (b)(2) to read as follows:

§ 685.210 Choice of repayment plan.

* * * * *

(b) * * *

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to either the income contingent or income-based repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan or the income-based repayment plan, the repayment period is calculated as described in § 685.209(c)(4) or § 685.221(b)(6), respectively.

* * * * *

■ 23. Section 685.211 is amended by:

■ A. Revising paragraph (a)(1).

■ B. Revising paragraph (d)(3)(ii).

The revisions read as follows:

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) Except as provided for the income-based repayment plan under § 685.221(c)(1), the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

* * * * *

(d) * * *

(3) * * *

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan, the Secretary may designate the income contingent repayment plan or the income-based repayment plan for the borrower.

* * * * *

■ 24. Section 685.212 is amended by:

■ A. Redesignating paragraph (i) as paragraph (j).

■ B. Adding new paragraph (i) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(i) *Public Service Loan Forgiveness Program.* If a borrower meets the

requirements in § 685.219, the Secretary cancels the remaining principal and accrued interest of the borrower's eligible Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS Loan, and Direct Consolidation Loan.

* * * * *

■ 25. A new § 685.219 is added to read as follows:

§ 685.219 Public Service Loan Forgiveness Program.

(a) *General.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

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

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Eligible Direct loan means a Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual who is hired and paid by a public service organization.

Full-time (1) means working in qualifying employment in one or more jobs for the greater of—

(i)(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time.

(2) Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2612(a)(1) and (3) is not considered in determining the average hours worked on an annual or contract basis.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government, but does not include a member of the U.S. Congress.

Law enforcement means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or

the National Guard, means “active duty” service or “full-time National Guard duty” as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, “Military service” means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service organization means:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(4) A Tribal college or university; or

(5) A private organization that—

(i) Provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated health care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services; and

(ii) Is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if he or she—

(i) Is not in default on the loan for which forgiveness is requested;

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness; and

(C) At the time the remaining principal and accrued interest are forgiven;

(iii) Makes 120 separate monthly payments after October 1, 2007, on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps or Peace Corps position, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with § 685.221;

(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with § 685.209;

(C) A standard repayment plan, as determined in accordance with § 685.208(b); or

(D) Any other repayment plan if the monthly payment amount paid is not less than what would have been paid under the Direct Loan standard repayment plan described in § 685.208(b).

(2) If a borrower makes a lump sum payment on an eligible loan for which the borrower is seeking forgiveness by using all or part of a Segal Education Award received after a year of AmeriCorps service, or by using all or part of a Peace Corps transition payment if the lump sum payment is made no later than six months after leaving the Peace Corps, the Secretary will consider the borrower to have made qualifying payments equal to the lesser of—

(i) The number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have made under paragraph (c)(1)(iv) of this section; or

(ii) Twelve payments.

(d) *Forgiveness Amount.* The Secretary forgives the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section.

(e) *Application.* (1) After making the 120 monthly qualifying payments on the

eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary resumes collection of the loan and grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(Authority: 20 U.S.C. 1087e(m))

■ 26. Section 685.220 is amended by:

■ A. In paragraph (d)(1)(i)(B)(2), removing the word “or”.

■ B. Redesignating paragraph (d)(1)(i)(B)(3) as (d)(1)(i)(B)(4).

■ C. In newly redesignated paragraph (d)(1)(i)(B)(4), adding the words “is in default or” after the word “that”, and changing the period at the end of the paragraph to “; or”.

■ D. Adding new paragraph (d)(1)(i)(B)(3).

■ E. Adding new paragraph (d)(1)(i)(B)(5).

■ F. In paragraph (d)(1)(ii)(A), removing the word “a” and adding, in its place, the words “the grace” before the word “period”.

■ G. In paragraph (d)(1)(ii)(D), adding the words “, or the income-based repayment plan described in § 685.208(m),” after the reference to “§ 685.220(k)” and the words “or § 685.221(e)” after the reference to “§ 685.209(d)(5)”.

The additions read as follows:

§ 685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(3) The borrower wishes to use the Public Service Loan Forgiveness Program;

* * *

(5) The borrower has a FFEL Consolidation Loan and the borrower

wants to consolidate that loan into the Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program.

* * * * *

■ 27. A new § 685.221 is added to read as follows:

§ 685.221 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL or Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and
(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the

poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Terms of the repayment plan.* (1) A borrower may select the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(2) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

(2) The Secretary adjusts the calculated monthly payment if—

(i) The total amount of the borrower's eligible loans are not Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are Direct Loans;

(ii) The calculated amount under paragraph (b)(1) or (b)(2)(i) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(iii) The calculated amount under paragraph (b)(1) or (b)(2)(i) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(3) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan. On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

(4) Except as provided in paragraph (b)(3) of this section, accrued interest is capitalized at the time a borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(5) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* The Secretary applies any payment made under an income-based repayment plan in the following order:

(1) Accrued interest.

(2) Collection costs.

(3) Late charges.

(4) Loan principal.

(d) *Changes in the payment amount.*

(1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower's monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based payment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower's monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Direct Consolidation Loan, the applicable repayment period specified in § 685.208(j) for the amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) *Eligibility documentation and verification.* (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the Secretary. The borrower

provides consent by signing a consent form and returning it to the Secretary;

(B) If a borrower's AGI is not available, or the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) The Secretary designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (2) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b).

(iv) Made monthly payments under the Direct Loan standard repayment plan described in § 685.208(b) based on the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Paid Direct Loans under the income-contingent repayment plan.

(vi) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of \$0.00, as provided under paragraph (b)(2)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period, or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower has made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994;

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has a Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan after qualifying for the income-based repayment plan; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) If the Secretary determines that a borrower satisfies the loan forgiveness requirements, the Secretary cancels the outstanding balance and accrued interest on the Direct Consolidation Loan described in paragraph (f)(3)(i), (iii) or (iv) of this section or other eligible Direct Loans described in paragraph (f)(3)(ii) or (iv) of this section.

(Authority: 20 U.S.C. 1098e)

■ 28. Section 685.304 is amended by:

■ A. Revising paragraph (b)(4)(ii).

■ B. Revising paragraph (b)(4)(vi).

The revisions read as follows:

§ 685.304 Counseling borrowers.

* * * * *

(b) * * *

(4) * * *

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, income contingent repayment, and income-based repayment plans, and loan consolidation;

* * * * *

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial forgiveness or discharge of a loan;

* * * * *

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**Thursday,
October 23, 2008**

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline; Notice

AGENCY: State Justice Institute.

ACTION: Proposed Grant Guideline for 2009.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2009 State Justice Institute grants, cooperative agreements, and contracts.

DATES: October 23, 2008.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Final appropriations legislation for fiscal year (FY) 2009 is still pending. The House, Commerce, Justice and Science (CJS) Appropriations Subcommittee provides \$4,000,000 for the Institute in FY 2009; the Senate CJS Subcommittee provides \$5,000,000.

Regardless of the final amount provided to the Institute for FY 2009, the Institute's Board of Directors intends to solicit grant applications across the range of grant programs available.

The following Grant Guideline is adopted by the State Justice Institute for FY 2009.

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I. The Mission of the State Justice Institute

The Institute was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts. The Institute is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

- A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the State courts;
- B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;
- C. Participate in joint projects with Federal agencies and other private grantors;
- D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;
- E. Encourage and assist in furthering judicial education; and,
- F. Encourage, assist, and serve in a consulting capacity to State and local

justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies* (42 U.S.C. 10705(b)(1)(A)).

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments* (42 U.S.C. 10705(b)(1)(B)).

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments* (42 U.S.C. 10705(b)(1)(C)). An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients* (42 U.S.C. 10705 (b)(2)(A)–(D)).

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

- a. Nonprofit organizations with expertise in judicial administration;
- b. Institutions of higher education;
- c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and
- d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

III. Scope of the Program

SJI is offering six types of grants in FY 2009: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiative Grants and Scholarships. SJI does not award Continuation Grants except in Strategic Initiative Projects.

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in State courts locally or nationwide. Project Grants may ordinarily not exceed \$300,000. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. If questions arise, applicants are strongly encouraged to consult the Institute.

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, the Board is likely to favor Project Grant applications focused on the Special Interest program categories described below. Potential applicants are also encouraged to bring to the attention of the Institute innovative projects outside those categories. Funding will not be made available for the ordinary, routine operations of court systems.

1. Special Interest Program Criteria and Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a Special Interest project if it meets the

four criteria set forth above and it falls within the scope of the Board-designated Special Interest program categories listed below. The order of listing does not imply any ranking of priorities among the categories.

a. Immigration Issues

Recent immigration growth is having a significant impact on State and local courts. Courts along the Southwest Border, and other areas of the United States with large immigrant populations, are contending with issues such as how to provide culturally appropriate services; increases in gang-crime cases involving immigrants; and the impact of federal and state immigration policies on court operations. The Institute is interested in projects that highlight the issues State and local courts face in addressing the demands of increased immigration, and potential solutions to those issues. The Institute is also interested in judicial education or other programs that prepare judges and court officials to address immigration issues in their courts, and the development of plans of action to improve service delivery, build community coalitions, and accommodate federal and state immigration policies.

b. Courts and the Media

Recent repeated public attacks on courts have gone largely unanswered, because judges were unwilling and/or courts were unable to respond effectively. No one is better prepared than a judge to describe decision-making on the bench within the law and the Constitution. The Institute is interested in projects that explore the role of judge as public commentator within ethical and professional bounds. The Institute is also interested in judicial education or other programs that prepare judges and court officials to serve as spokesmen in short notice, high profile circumstances, especially in situations where courts lack dedicated press secretaries. Finally, the Institute is interested in promoting initiatives that improve relations between the judiciary and the media, since much of the recent rancor between the two seems based on unfamiliarity with one another's duties, responsibilities, and limitations. In particular, the Institute is interested in proposals that focus on cultivating trust and open communication between the Third Branch and the Fourth Estate on a day-to-day basis, because dialogue between strangers is rarely started and never sustained in a crisis.

c. Elder Issues

This category includes research, demonstration, evaluation, and education projects designed to improve management of guardianship, probate, fraud, Americans with Disability Act, and other types of elder-related cases. The Institute is particularly interested in projects that would develop and evaluate judicial branch education programs addressing elder law and related issues.

d. Performance Standards and Outcome Measures

This category includes projects that will develop and measure performance standards and outcomes for all aspects of court operations. The Institute is particularly interested in projects that take the National Center for State Courts' "CourTools" to the next level. Other initiatives designed to further professionalize court staff and operations, or to objectively evaluate the costs and benefits and cost-effectiveness of problem solving courts, are also welcome.

e. Relationship Between State and Federal Courts

This category includes research, demonstration, evaluation, and education projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is also interested in projects that improve relationships between the courts, the legislative and executive branches, and the people.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide State or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed \$30,000, and shall only cover the cost of obtaining the services of expert consultants. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months.

In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant

seeking a \$30,000 TA grant must provide a \$15,000 match, of which up to \$12,000 can be in-kind and not less than \$3,000 must be cash. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet States' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed \$20,000. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a \$20,000 CAT grant must provide a \$10,000 match, of which up to \$8,000 can be in-kind and not less than \$2,000 must be cash. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow the Institute and Federal, State, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. Though many, if not most, Partner Grants will fall under the Special Interest program categories cited in section III.A., proposals addressing other emerging or high priority court-related problems will be considered on a case-by-case basis. The Institute and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award; applicants for Partner Grants may request any amount of funding. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by the Institute must be matched at least dollar-for-dollar. Applicants may contribute the required cash match directly or in cooperation with third

parties. Partner Grants are coordinated by the funding organizations. Applicants considering Partner Grants are encouraged to contact Institute staff to discuss the potential of this mechanism for project funding. Partner Grant application procedures can be found in section IV.E.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program Provides the Institute with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where the Institute uses its expertise and the expertise and knowledge of its grantees to address key issues facing State courts across the United States.

The funding is used for grants or contractual services, and any remaining balance not used for the SIG program will become available for the Institute's other grant programs. The program is handled at the discretion of the Institute's Board of Directors and Staff outside the normal grant application process (i.e., the Institute will initiate the project) and there is no cash match requirement.

F. Scholarships for Judges and Court Managers

Scholarships are intended to enhance the skills, knowledge, and abilities of State court judges and court managers by enabling them to attend out-of-State, or to enroll in online, educational and training programs sponsored by national and State providers that they could not otherwise attend or take online because of limited State, local, and personal budgets. Scholarships may not exceed \$1,500. The Institute's Board of Directors intends to reserve up to \$175,000 for scholarships in FY 2009. Scholarship application procedures can be found in section IV.D.

IV. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix B for the Project Grant application forms.

1. Forms

a. Application Form (Form A).

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the

Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of Form B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition to Form C, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-

spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas To Be Covered

The applicant should note the Special Interest criteria and category addressed by the proposed project when appropriate (see section III.A.), although it is not necessary for a project to be in a specific Special Interest Category.

c. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluations

(1) Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects*, the applicant should include

the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects*, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects*, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects*, the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) Evaluation. Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process

should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program

(e.g., what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that the Institute is unlikely to approve a limited extension of the grant period without very good cause. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. Products

The program narrative in the application should contain a description of the products to be developed (e.g., training curricula and materials, Web sites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be

submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (see Appendix A), State chief justice, State court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Dissemination to the in-State libraries may not be required for such products. Discussion of this dissemination process should occur between the grantee and staff at SJI prior to the final selection of the dissemination process to be used.

(1) Dissemination Plan. The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (i.e., whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each written product must be sent to the library established in each State to collect the materials developed with Institute support (see Appendix A). Applicants proposing to develop Web-based products should provide for sending a notice and description of the document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product (i.e., a written report with a reference to the web site). Five (5) copies of all project products should be submitted to the Institute, along with an electronic version in .html or .pdf format. Discussions of final product dissemination should be conducted with SJI staff prior to the end of the grant period.

(2) Types of Products and Press Releases. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants

proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

(3) Institute Review. Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in Web site or multimedia format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute (see section VI.A.11.f.).

(4) Acknowledgment, Disclaimer, and Logo. Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a Web site or other multimedia product, unless the Institute approves another placement.

g. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel (see section II.). If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and

consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (see Appendix B).

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the

application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover should be received two weeks in advance of the Board meeting, which can be seen on the Web site.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.1.2.c. Prior written Institute approval is required for any consultant rate in excess of \$800 per day; Institute funds may not be used to pay a consultant more than \$1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Federal Government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.1.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs, *i.e.* salaries plus fringe benefits (see section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement must be attached to the application.

l. Match

Applicants who do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching

contributions would be made (see sections VI.A.8, and VII.E.1.).

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a State or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of State or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. Applications received by the first day of the second month in a calendar quarter will be considered at the next Board meeting for that quarter. Please mark Project Application on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged by letter or e-mail.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project, as well as a Form A, "State Justice Institute Application" (see Appendix B) and Form B, Certificate of State Approval from the State Supreme Court, or its designated agency and Form C, "Project Budget in Tabular Format." Letters from regional court associations must be signed by the president of the association. The applications received by the first day of the second month in a calendar quarter will be reviewed in the Board meeting for that quarter.

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. Need for Funding. What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why are State or local resources

not sufficient to fully support the costs of the required consultant services?

b. Project Description. What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. Likelihood of Implementation. What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

A completed Form C "Project Budget, Tabular Format" and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be

aware that consultant rates above \$800 per day must be approved in advance by the Institute, and that no consultant will be paid more than \$1,100 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application may be submitted at any time and will be considered on a quarterly rolling basis. Applications should be received by the first day of the second month of a calendar quarter in order to be reviewed at the Board meeting for that quarter.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Institute's Board of Directors, letters sent under separate cover must be received by the same date as the technical assistance request being supported.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter as well as a Form A, "State Justice Institute Application;" Form B, "Certificate of State Approval;" and Form C, "Project Budget, Tabular Format" (see Appendices).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information.

a. For adaptation of a curriculum:

(1) Project Description. What is the title of the model curriculum to be adapted and who originally developed it? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated

in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from a single local jurisdiction, from across the State, from a multi-State region, from across the Nation)?

(2) Need for Funding. Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) Likelihood of Implementation. What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) Expressions of Interest by Judges and/or Court Personnel. Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) Need for Funding. What is the court reform or initiative prompting the need for training? How would the proposed training help the applicant implement planned changes at the court? Why are State or local resources not sufficient to fully support the costs of the required training?

(2) Project Description. What tasks would the trainer(s) be expected to perform, and how would they be accomplished? Which organization or individual would be hired, if in-house personnel are not the trainers, to provide the training, and how was the trainer selected? If a trainer has not yet been identified, what procedures and criteria would be used to select the trainer? [Note: Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.] What specific tasks would the trainer and court staff or regional court

association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost. The trainer must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) Likelihood of Implementation. What steps have been or would be taken to coordinate the implementation of the new reform, initiative, etc., and the training to support the same? For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the reform and initiate the training proposed, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants should attach a copy of budget Form C and a budget narrative (see subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

Letters of application may be submitted at any time and will be considered on a quarterly rolling basis. Applications should be received by the first day of the second month of a calendar quarter in order to be reviewed at the Board meeting for that quarter. (Dates of Board meetings will be available on the Web site once they are established: <http://www.Statejustice.org>.)

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. Applicants are encouraged to call SJI staff to discuss concerns about timing of submissions.

D. Partner Grants

The Institute and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting State and local courts. The Institute may solicit brief proposals from potential grantees to propose to fellow financial partners as a first step. Should the Institute be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant. As with Project Grants, Partner Grants will be targeted at initiatives likely to have a significant national impact.

E. Scholarships

1. Limitations

Applicants may not receive more than one scholarship in a two-year period unless the course specifically assumes multi-year participation or the course is part of a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of the Institute's Board of Directors to approve serial scholarships). Attendance at annual or mid-year meetings or conferences of a State or national organization does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed \$150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (e.g., reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive \$.585/mile (or the accepted GSA rate) up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of \$1,500 and other costs of attending the program—such as meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and

to combine aid from various sources whenever possible. A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

a. Recipients. Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. Courses. A scholarship can be awarded only for: (1) A course presented in a State other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend. The Institute does not submit the names of scholarship recipients to educational organizations.

3. Forms

a. Scholarship Application—Form S1 (Appendix D). The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted. Please be sure to indicate whether the State will be providing funds for the project and, if so, how much. The Institute will not supplant State funds for these scholarships: it can only provide funding above the amount to be covered by the State.

b. Scholarship Application Concurrence—Form S2 (Appendix D).

Judges and court managers applying for scholarships must submit the original written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix D). The signature of the presiding judge of the applicant's court may not be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications may be submitted at any time but will be reviewed on a quarterly basis. This means scholarships will be awarded on a "first come, first considered" basis. The dates for applications to be received by the Institute for consideration in FY 09 are November 1, February 1, May 1, and August 1. (These are not mailing deadlines. The applications must be received by the Institute by each of these dates.) No exceptions or extensions will be granted. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in determining the review date.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

V. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter or e-mail acknowledging receipt of the application.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

- (1) The soundness of the methodology;
- (2) The demonstration of need for the project;
- (3) The appropriateness of the proposed evaluation design;
- (4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

(11) The proposed project's relationship to one of the Special Interest Criteria and Categories set forth in section III.A.

b. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of the Institute and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, the Institute and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like. Should the Institute be chosen as the lead grant manager, Project application review procedures will apply to the proposed Partner Grant.

5. Scholarships

Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel.

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent ("first come, first considered");

b. The unavailability of State or local funds or scholarship funds from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational providers and programs;

f. The balance of scholarships among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors may delegate its authority to approve TA and CAT Grants to the committee established for each program. The Board or the committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman will serve as the tie-breaker. The Chairman of the Board will sign approved awards on behalf of the Institute.

4. Partner Grants

The Institute's internal process for the review and approval of Partner Grants will depend upon negotiations with fellow financiers. The Institute may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors on whatever schedule makes sense at the time.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), if requested the Institute will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State Court Administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final

award document will include a Special Condition that will require additional grantee reporting and Institute review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in situations where past poor performance by a grantee necessitates increased grant oversight.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds (see section VIII.A.7.).

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). Scholarship recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures (see section VIII.K.).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b)

individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

- (1) Using an official position for private gain; or
- (2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon,

shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project or the application of project income (e.g., tuition or the proceeds of sales of grant products) generated during the grant period to grant costs. In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project or that portion of the grantee's federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program. The amount and nature of

required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.).

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a multimedia

product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available on the Institute's Web site: <http://www.sji.gov>.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

b. Charges for Grant-Related Products/Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than \$25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and

disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute (see section VII.G.).

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.L.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

- (1) Five (5) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required;
- (2) An electronic version of the product in .html or .pdf format to the Institute; and
- (3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute's Web site, <http://www.SJI.org>.
- (4) Bound copies of products, where possible and cost-effective, rather than hard copies in ring binders, to SJI depository libraries. Grantees that develop Web-based electronic products must send an announcement/description of the document and indicate where it may be obtained to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Technical Assistance and Curriculum

Adaptation and Training Grants are not required to submit final products to State libraries.

f. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of website or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline.

A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.C.2.

16. Supplantation and Construction

To ensure that Institute funds are used to supplement and improve the operation of State courts, rather than to support basic court services, Institute funds shall not be used for the following purposes:

- a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);
- b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or
- c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.e. and f. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (e.g., by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must

submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers must be submitted within 90 days after the end of the course, which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at <http://www.whitehouse.gov/omb>).

1. *Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions.*

2. *Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments.*

3. *Office of Management and Budget (OMB) Circular A-102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

4. *Office of Management and Budget (OMB) Circular A-110*, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

5. *Office of Management and Budget (OMB) Circular A-122*, Cost Principles for Non-profit Organizations.

6. *Office of Management and Budget (OMB) Circular A-133*, Audits of States, Local Governments and Non-profit Organizations.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VI.A.3.).

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a "Total Project Cost" basis. That is, total project costs, including

Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors, but before the beginning of the grant, may be counted as match. Grantees that do not anticipate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section (see subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and

nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. Request for Advance or Reimbursement of Funds

Grantees will receive funds on a U.S. Treasury "check-issued" or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, payment will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement Form R, along with the

instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's Web site: <http://www.sji.gov/forms.php>.

b. Termination of Advance and Reimbursement Funding. When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or is unable to adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by U.S. Treasury check or EFT to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

c. Principle of Minimum Cash on Hand. Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. General Requirements. To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Due Dates and Contents. A Financial Status Report is required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request

a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circulars A-21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A-87*, Cost Principles for State and Local Governments; and *A-122*, Cost Principles for Non-profit Organizations.

No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at <http://www.whitehouse.gov/omb>.

2. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds \$10,000 or software to be purchased exceeds \$3,000.

c. Consultants. The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds \$800 a day. Institute funds may not be used to pay a consultant more than \$1,100 per day.

d. Budget Revisions. Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval (see section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds

may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available.

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. Establishment of Indirect Cost Rates. To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. No Approved Plan. If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A-102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A-110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A-102* and *A-110* apply to all Institute grantees and subgrantees except as provided in section VI.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A-133*, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time

schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no instance should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship.

2. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the

close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).

2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see subsections F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see subsection H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section VII.I.2.a.).

13. The purchase of automated data processing equipment and software (see section VII.I.2.b.).

14. Consultant rates (see section VII.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the

Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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Janice T. Munsterman, Executive Director (ex officio).

Janice Munsterman,
Executive Director.

Appendix A—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court, Judicial Building, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242-4347, director@alalinc.net.

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska State Court Law Library, 303 K Street, Anchorage, AK 99501, (907) 264-0583, cfellows@courts.state.ak.us.

Arizona

Supreme Court Library

Ms. Lani Orosco, Staff Assistant, Arizona Supreme Court, Staff Attorney's Office Library, 1501 W. Washington, Suite 445, Phoenix, AZ 85007, (602) 542-5028, lorosco@supreme.sp.state.az.us.

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, 625 Marshall Street, Little Rock, AR 72201, (501) 682-9400, jd.gingerich@arkansas.gov.

California

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102, (415) 865-4235, william.vickrey@jud.ca.gov.

Colorado

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, 2 East 14th Avenue, Denver, CO 80203, (303) 837-3720, cscltech@state.co.us.

Connecticut

State Library

Ms. Denise D. Jernigan, Law Librarian, Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106, (860) 757-6598, djernigan@cslib.org.

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577-8481, michael.mclaughlin@state.de.us.

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Executive Officer, District of Columbia Courts, 500 Indiana Avenue, NW., Suite 1500, Washington, DC 20001, (202) 879-1700, Wicksab@dcsc.gov.

Florida

Administrative Office of the Courts

Ms. Elisabeth H. Goodner, State Courts Administrator, Office of the State Courts Administrator, Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399, (850) 922-5081, goodnerl@flcourts.org.

Georgia

Administrative Office of the Courts

Mr. David Ratley, Director, Administrative Office of the Courts, 244 Washington Street, SW., Suite 300, Atlanta, GA 30334, (404) 656-5171, ratleydl@gaaoc.us.

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539-4964, Ann.S.Koto@courts.state.hi.us.

Idaho

AOC Judicial Education Library/State Law Library

Mr. Richard Visser, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334-3316, lawlibrary@isc.state.id.us.

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701-1791, (217) 782-2425, blarison@court.state.il.us.

Indiana

Supreme Court Library

Ms. Terri L. Ross, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232-2557, tross@courts.state.in.us.

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Director of Judicial Branch Education, Iowa Judicial Branch,

- Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, IA 50319, (515) 242-0190, jerry.beatty@jb.state.ia.us.
- Kansas**
Supreme Court Library
Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, Kansas Judicial Center, 301 SW. 10th Avenue, Topeka, KS 66612, (785) 296-3257, knechtj@kscourts.org.
- Kentucky**
State Law Library
Ms. Vida Vitagliano, Cataloging and Research Librarian, Kentucky Supreme Court Library, 700 Capitol Avenue, Suite 200, Frankfort, KY 40601, (502) 564-4185, vidavitagliano@mail.aoc.state.ky.us.
- Louisiana**
State Law Library
Ms. Carol Billings, Director, Louisiana Law Library, Louisiana Supreme Court Building, 400 Royal Street, New Orleans, LA 70130, (504) 310-2401, cbillings@lasc.org.
- Maine**
State Law and Legislative Reference Library
Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287-1600, lynn.randall@legislature.maine.gov.
- Maryland**
State Law Library
Mr. Steve Anderson, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260-1430, steve.anderson@courts.state.md.us.
- Massachusetts**
Middlesex Law Library
Ms. Linda Hom, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494-4148, midlawlib@yahoo.com.
- Michigan**
Michigan Judicial Institute
Dawn F. McCarty, Director, Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 373-7509, mccartyd@courts.mi.gov.
- Minnesota**
State Law Library (Minnesota Judicial Center)
Ms. Barbara L. Golden, State Law Librarian, G25, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, MN 55155, (612) 297-2089, barb.golden@courts.state.mn.us.
- Mississippi**
Mississippi Judicial College
Hon. Leslie G. Johnson, Executive Director, Mississippi Judicial College, P.O. Box 8850, University, MS 38677, (662) 915-5955, lwleslie@olemiss.edu.
- Montana**
State Law Library
Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, P.O. Box 203004, Helena, MT 59620, (406) 444-3660, jmeadows@mt.gov.
- Nebraska**
Administrative Office of the Courts
Mr. Philip D. Gould, Director, Judicial Branch Education, Administrative Office of the Courts/Probation, 521 South 14th St., Suite 200, Lincoln, NE 68508-2707, (402) 471-3072 (office)/(402) 471-3071 (fax), pgould@nsc.state.ne.us.
- Nevada**
Ms. Kathleen Harrington, Law Librarian, Nevada Supreme Court Law Library, 201 S. Carson Street, Suite 100, Carson City, Nevada 89701-4702, (775) 684-1715.
- New Hampshire**
New Hampshire Law Library
Ms. Mary Searles, Technical Services Law Librarian, New Hampshire Law Library, Supreme Court Building, One Noble Drive, Concord, NH 03301-6160, (603) 271-3777, msearles@courts.state.nh.us.
- New Jersey**
New Jersey State Library
Mr. Thomas O'Malley, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625-0250, (609) 292-6230, tomalley@njstatelib.org.
- New Mexico**
Supreme Court Library
Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827-4850.
- New York**
Supreme Court Library
Ms. Barbara Briggs, Law Librarian, Syracuse Supreme Court Law Library, 401 Montgomery Street, Syracuse, NY 13202, (315) 671-1150, bbriggs@courts.state.ny.us.
- North Carolina**
Supreme Court Library
Mr. Thomas P. Davis, Librarian, North Carolina Supreme Court Library, 500 Justice Building, 2 East Morgan Street, Raleigh, NC 27601, (919) 733-3425, tpd@sc.state.nc.us.
- North Dakota**
Supreme Court Library
Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor Judicial Wing, Bismarck, ND 58505-0540, (701) 328-2229, mkramer@ndcourts.com.
- Northern Mariana Islands**
Supreme Court of the Northern Mariana Islands
Ms. Margarita M. Palacios, Director of Courts, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 502165, Saipan, MP 96950, (670) 235-9700, supremecourt@saipan.com.
- Ohio**
Supreme Court Library
Mr. Ken Kozlowski, Director, Law Library, Supreme Court of Ohio, 65 South Front Street, 11th Floor, Columbus, OH 43215-3431, (614) 387-9666, kozlowsk@sconet.state.oh.us.
- Oklahoma**
Administrative Office of the Courts
Mr. Michael D. Evans, State Court Administrator, Administrative Office of the Courts, 1915 North Stiles Avenue, Suite 305, Oklahoma City, OK 73105, (405) 521-2450, mike.evans@oscn.net.
- Oregon**
Administrative Office of the Courts
Ms. Kingsley W. Click, State Court Administrator, Oregon Judicial Department, Supreme Court Building, 1163 State Street, Salem, OR 97301, (503) 986-5500, kingsley.w.click@ojd.state.or.us.
- Pennsylvania**
State Library of Pennsylvania
Ms. Kathleen Kline, Collection Management Librarian, State Library of Pennsylvania, Bureau of State Library, 333 Market Street, Harrisburg, PA 17126-1745, (717) 787-5718, kakline@state.pa.us.
- Puerto Rico**
Office of Court Administration
Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919.
- Rhode Island**
Roger Williams University
Ms. Gail Winson, Director of Law Library/Associate Professor of Law, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809, (401) 254-4531, gwinson@law.rwu.edu.
- South Carolina**
Coleman Karesh Law Library (University of South Carolina School of Law)
Mr. Steve Hinckley, Director, Coleman Karesh Law Library, University of South Carolina, Main and Green Streets, Columbia, SC 29208, (803) 777-5944, hinckley@law.sc.edu.
- South Dakota**
State Law Library
Librarian, South Dakota State Law Library, 500 East Capitol, Pierre, South Dakota 57501, (605) 773-4898, donnis.deyo@ujs.state.sd.us.
- Tennessee**
Tennessee State Law Library
Hon. Cornelia A. Clark, Executive Director, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219, (615) 741-2687, cclark@tscmail.state.tn.us.

Texas

State Law Library

Mr. Marcelino A. Estrada, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463-1722, tony.estrada@sll.state.tx.us.

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00804.

Utah

Utah State Judicial Administration Library

Ms. Jessica Van Buren, Utah State Library, 450 South State Street, P.O. Box 140220, Salt Lake City, UT 84114-0220, (801) 238-7991, jessicavb@email.utcourts.gov.

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian, Vermont Department of Libraries, 109 State Street, Pavilion Office Building, Montpelier, VT 05609, (802) 828-3268, paul.donovan@dol.state.vt.us.

Virginia

Administrative Office of the Courts

Ms. Gail Warren, State Law Librarian, Virginia State Law Library, Supreme Court of Virginia, 100 North Ninth Street, 2nd Floor, Richmond, VA 23219-2335, (804) 786-2075, gwarren@courts.state.va.us.

Washington

Washington State Law Library

Ms. Kay Newman, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504-0751, (360) 357-2136, kay.newman@courts.wa.gov.

West Virginia

Supreme Court of Appeals Library

Ms. Kaye Maerz, State Law Librarian, West Virginia Supreme Court of Appeals Library, 1900 Kanawha Boulevard East, Building 1, Room E-404, Charleston, WV 25305, (304) 558-2607, kaye.maerz@courts.wv.org.

Wisconsin

State Law Library

Ms. Jane Colwin, State Law Librarian, State Law Library, 120 M.L.K. Jr. Boulevard,

Madison, WI 53703, (608) 261-2340, jane.colwin@wicourts.gov.

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777-7509, Kcarlson@courts.state.wy.us.

National

American Judicature Society

Ms. Deborah Sulzbach, Acquisitions Librarian, Drake University, Law Library, Opperman Hall, 2507 University Avenue, Des Moines, IA 50311-4505, (515) 271-3784, deborah.sulzbach@drake.edu.

National Center for State Courts

Ms. Joan Cochet, Library Specialist, National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185-4147, (757) 259-1826, library@ncsc.dni.us.

National Judicial College

Mr. Randall Snyder, Law Librarian, National Judicial College, Judicial College Building MS 358, Reno, NV 89557, (775) 327-8278, snyder@judges.org.

STATE JUSTICE INSTITUTE APPLICATION

1. APPLICANT a. Organization Name _____ b. Street/P.O. Box _____ c. City _____ d. State _____ e. Zip Code _____ f. Phone Number _____ g. Fax Number _____ h. Web Site Address _____ i. Name & Phone Number of Contact Person _____ j. Title _____ k. E-Mail Address _____	2. TYPE OF APPLICANT (Check appropriate box) ☐ State Court ☐ National organization operating in conjunction with State court ☐ National State court support organization ☐ College or university ☐ Other non-profit organization or agency ☐ Individual ☐ Corporation or partnership ☐ Other unit of government ☐ Other _____ (Specify) _____
3. PROPOSED START DATE _____	
4. PROJECT DURATION (months) _____	
5. APPLICANT FINANCIAL CONTACT a. Organization Name _____ b. Street/P.O. Box _____ c. City _____ d. State _____ e. Zip Code _____ f. Phone Number _____ g. Fax Number _____ h. Web Site Address _____ i. Name & Phone Number of Contact Person _____ j. Title _____ k. E-Mail Address _____	6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION: Source _____ Date Submitted _____ Amount Requested _____ Disposition (if any) or Current Status _____ 7. a. AMOUNT REQUESTED FROM SJI \$ _____ b. AMOUNT OF MATCH Cash match \$ _____ Non-cash Match \$ _____ c. TOTAL MATCH \$ _____ d. OTHER CASH \$ _____ e. TOTAL PROJECT COST \$ _____
8. TITLE OF PROPOSED PROJECT _____	
9. CONGRESSIONAL DISTRICT OF: _____ Name of Representative; District Number Project location (if different from applicant location): Name of Representative; District Number	
10. CERTIFICATION On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant. SIGNATURE OF RESPONSIBLE OFFICIAL _____ (For applications from State and local courts, Form B - Certificate of State Approval, must be attached) TITLE _____ DATE _____	

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR APPLICATION FORM A

1. **Legal name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of the applicant, including phone and fax numbers and website addresses; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.
2. **Type of Applicant:**
 - a. **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by, or report for, administrative purposes to the chief or presiding justice or judge, or his or her designee.
 - b. **National organizations operating in conjunction with State court** include national non-profit organization controlled by, operating in conjunction with, and serving State courts.
 - c. **National state court support organization** include national non-profit organizations with primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.
 - d. **College or university** includes all institutions of higher education.
 - e. **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).
 - f. **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.
 - g. **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.
 - h. **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.
3. The **proposed start date** of the project should be the earliest feasible date on which applicant will be able to begin project activities following the date of award (example: 08/01/2007).
4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.
5. The **applicant financial contact** is the court or organization employee that will administer and account for any funding awarded.

6. If this application, or an application requesting support for the same project or a similar project, has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of submission, the **amount** of funding sought, and the **disposition** (if any) or current status.
7. Requested funding:
 - a. Insert the **amount requested** from the State Justice Institute to conduct the project.
 - b. The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, or private sources.
See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government or private sources to support the project.
 - c. **Total match** refers to the sum of the cash and in-kind contributions to the project.
 - d. **Other cash** refers to other funds that may not serve as a match but can be used for a project.
 - e. **Total project cost** represents the sum of the amount requested from the Institute and all other contributions to the project.
8. The **title of the proposed project** should reflect the objectives of the activities to be conducted.
9. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representative(s) from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.
10. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed. For applications from State and local courts, Form B, Certificate of State Approval, must be attached.

STATE JUSTICE INSTITUTE**Certificate of State Approval**

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[] agrees to receive and administer and be accountable for all funds
awarded by the Institute pursuant to the application.

[] designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds
awarded by the Institute pursuant to the application.

Signature

Date

Name

Title

INSTRUCTIONS

The *State Justice Institute Act* requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts (42 U.S.C. 10705(b)(4)).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law, or by delegation from the State Supreme Court, to approve applications for grant funding and to receive, administer, and be accountable for that funding.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant:
 Project Title:
 For Project Activity from/to:
 Total Amount Requested for Project from SJI:

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND FUNDS	TOTAL
Direct Costs							
Personnel							\$ -
Fringe Benefits							\$ -
Consultant / Contractual							\$ -
Travel							\$ -
Equipment							\$ -
Supplies							\$ -
Telephone							\$ -
Postage							\$ -
Printing / Photocopying							\$ -
Audit							\$ -
Other (specify)							\$ -
Subtotal, Direct Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal, Indirect Costs							\$ -
Grand Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Remarks:

Application Budget Instructions

If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12 months. However, a grand total project budget must also be included for multi-year projects. In addition to Form C, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category. If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs. If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

STATE JUSTICE INSTITUTE ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the grant, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.
2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.
3. In accordance with 42 U.S.C. 10706(a) and 10707(c):
 - a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;
 - b. No officer or employee of the applicant will intentionally identify the Institute or applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,
 - c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.
4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities.
5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.
6. It will provide for an annual fiscal audit of the project.
7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708(b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.
9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.
10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.
11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.
12. The following statement will be prominently displayed on all products prepared as a result of the project: "This [document, website, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."
13. The "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with Institute funds, unless another placement is approved in writing by the Institute.
14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.
15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of the project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period;; and that financial reports will contain the information required.

16. At the conclusion of the project, title to all expendable and non-expendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.
17. The person signing the application is authorized to do so on behalf of the applicant, and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

☐ Yes ☐ No

Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature _____

Name (Typed) _____

Title _____

Date _____

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box
City State Zip Code
5. Telephone No. _____
6. Email Address: _____
7. Congressional District: _____

PROGRAM INFORMATION:

☐ On-site ☐ Online

8. Course Name: _____
9. Course Dates: _____
10. Course Provider: _____
11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to \$150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of \$1,500.

Tuition: \$ _____ Transportation: \$ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: \$ _____ Total Amount Requested: \$ _____

Are you seeking/have you received a scholarship for this course from another source? ☐ Yes ☐ No

If yes, please specify the source(s) and amount(s), and status (received or pending) _____

Are State or local funds available to support your attendance at the proposed course? ☐ Yes ☐ No

If yes, what amount(s) will be provided? _____

**Scholarship Application****Page 2****ADDITIONAL INFORMATION:**

Please attach a current resume or professional summary, and provide the information requested below.
(You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.
2. Please describe how taking this course will benefit you, your court, and the State's courts generally.
3. Is there an educational program currently available through your State on this topic?
4. How long have you served as a judge or court manager?
5. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
6. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory and which were non-mandatory.

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally and, if possible, state-wide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature

Date

Please return this form and Form S-2 to:
Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice of the State Supreme Court (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled: _____

prepared by _____,
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State. The applicant's absence to attend the program would not present an undue hardship to the court.

Check box that applies:

- ☐ 1. Public funds **are not** available to enable the applicant to attend this course, and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.
- ☐ 2. Public funds **are** available to support the applicant, but are insufficient to cover total costs. Therefore funding from the Institute is requested.

Signature

Name

Title

Date

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Part IV

Department of Agriculture

**Office of Energy Policy and New Uses
7 CFR Part 2902**

**Designation of Biobased Items for Federal
Procurement; Proposed Rule**

DEPARTMENT OF AGRICULTURE**Office of Energy Policy and New Uses****7 CFR Part 2902****RIN 0503-AA33****Designation of Biobased Items for Federal Procurement****AGENCY:** Departmental Administration, USDA.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement, by adding nine sections to designate the following nine items within which biobased products would be afforded Federal procurement preference: Chain and cable lubricants; corrosion preventatives; food cleaners; forming lubricants; gear lubricants; general purpose household cleaners; industrial cleaners; multipurpose cleaners; and parts wash solutions. USDA also is proposing minimum biobased content for each of these items.

DATES: USDA will accept public comments on this proposed rule until December 22, 2008.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503-AA33. Also, please identify submittals as pertaining to the "Proposed Designation of Items."

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

- *E-mail:* biopreferred@usda.gov. Include RIN number 0503-AA33 and "Proposed Designation of Items" on the subject line. Please include your name and address in your message.

- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Shana Love, USDA, Office of the Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-0103.

- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotope, etc.) should contact the USDA TARGET Center at (202) 720-2600 (voice) and (202) 401-4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Shana Love, USDA, Office of the Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW.,

Washington, DC 20250-0103; e-mail: biopreferred@usda.gov; phone (202) 205-4008. Information regarding the Federal Procurement of Biobased Products (one part of the BioPreferred Program) is available on the Internet at <http://www.biopreferred.gov>.

SUPPLEMENTARY INFORMATION: *The information presented in this preamble is organized as follows:*

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I. Authority

The designation of these items is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

II. Background

Section 9002, as amended by the FCEA of 2008, provides for the preferred procurement of biobased products by Federal procuring agencies (referred to hereafter in this FR notice as the "preferred procurement program"). The definition of "procuring agency" in section 9002, as amended by the FCEA of 2008, includes both Federal agencies and "a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract." Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds \$10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled \$10,000 or more. Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. To illustrate, you are awarded a Federal contract to construct a Federal office building with elevators. The elevators require hydraulic fluid to operate. Because stationary equipment hydraulic fluids are an item that has been designated for preferred procurement, the hydraulic fluid purchased for use in the elevators would be subject to the requirements of section 9002. In order to install these elevators, cranes may be used. These cranes require hydraulic fluid to operate. The hydraulic fluid purchased for the maintenance of these cranes used in the performance of that contract, however, is considered to be incidental to the purpose of the Federal contract. Because it is incidental, it would not be subject to the requirements of section 9002, even though some of the monies received under the contract might be used to purchase the hydraulic fluid used in the cranes.

In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their

performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B), as amended by the FCEA of 2008, requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items and to recommend where appropriate the minimum level of biobased content to be contained in the procured products.

It is the responsibility of the manufacturers to “self-certify” that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and may take further actions as deemed appropriate.

Subcategorization. Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are groups of products within the item that meet different markets and uses and/or different performance specifications. For example, within the designated item “hand cleaners and sanitizers,” some products are required to meet performance specifications for sanitizing, while other products do not need to meet these specifications. Where such subgroups exist, USDA intends to create subcategories. For example, for the item “hand cleaners and sanitizers,” USDA has determined it is reasonable to create a “hand cleaner” subcategory and a “hand sanitizer” subcategory. Sanitizing specifications would be applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each item to evaluate whether there are groups of products within the item that meet different performance specifications and, where USDA finds this type of difference, it intends to create subcategories.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that deicing products are required to meet, but it has only information on one type of deicing product. In such instances, USDA may

either designate the item without creating subcategories (i.e., defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained.

Within today’s proposed rule, USDA is not proposing subcategories for any of the nine items being proposed for designation, but is requesting specific comments on the appropriateness of creating subcategories within several items.

Minimum Biobased Contents. The minimum biobased contents being proposed with today’s rule are based on products for which USDA has biobased content test data. In addition to considering the biobased content test data for each item, USDA also considers other factors including product performance information and the range, groupings, and breaks in the biobased content test data array. Consideration of this information allows USDA to establish minimum biobased contents on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, USDA must rely on biobased product manufacturers to voluntarily submit product information and, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these designated items, USDA will evaluate whether the minimum biobased content for a designated item will be revised.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products within that item are identified and tested. In today’s proposed rule, none of the minimum biobased contents for the designated items are based on a single tested product.

Where USDA receives additional information on biobased content for products within these proposed items during the public comment period, USDA will take that information into consideration when establishing the minimum biobased content when the items are designated in the final rulemaking.

Overlap with EPA’s Comprehensive Procurement Guideline program for recovered content products under the

Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are biobased items designated for preferred procurement under the preferred procurement program may also be items the Environmental Protection Agency (EPA) has designated under the EPA’s Comprehensive Procurement Guideline (CPG) for Products Containing Recovered Materials. Where that occurs, an EPA-designated recovered content product (also known as “recycled content products” or “EPA-designated products”) has priority in Federal procurement over the qualifying biobased product as identified in 7 CFR § 2902.2. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to provide additional product and performance information to Federal agencies to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. As this information becomes available, USDA will place it on the BioPreferred Web site with its catalog of qualifying biobased products.

In cases where USDA believes an overlap with EPA-designated recovered content products may occur, manufacturers are being asked to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product’s biobased content and its profile against environmental and health measures and life-cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM Standard D7075, “Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products,” for evaluating and reporting on environmental performance of biobased products). Such information will permit agencies to determine whether or not an overlap occurs. Detailed information on the BEES analytical tool can be found on the Web site <http://www.bfrl.nist.gov/oea/software/bees.html>. Summary information on ASTM Standard D7075, and other ASTM standards, can be

found on ASTM's Web site at <http://www.astm.org>.

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because "lubricating oils containing re-refined oil" has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, "lubricating oils containing re-refined oil." If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

This proposed rule designates one item for preferred procurement for which there may be overlap with an EPA-designated recovered content product. This item is "gear lubricants," which, depending on how they are used, may overlap with the EPA-designated recovered content product "Re-refined Lubricating Oils." EPA provides recovered materials content recommendations for this recovered content product in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for this CPG product can be found by accessing EPA's Web site <http://www.epa.gov/epaoswer/non-hw/procure/products.htm> and then clicking on the appropriate product name.

Federal Government Purchase of "Green" Products. Three components of the Federal government's green purchasing program are the Biobased Products Preferred Purchasing Program, the Environmental Protection Agency's

Comprehensive Procurement Guideline for Products Containing Recovered Materials, and the Environmentally Preferable Products Program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are "environmentally preferable." For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards¹ for institutional cleaning products or that products must have been reformulated in accordance with recommendations from the U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol ethers, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

On the other hand, some biobased products may be better for the environment than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the "cradle-to-grave" impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their "cradle-to-grave" impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new, fossil carbon into the atmosphere. Qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new, fossil carbon into the

atmosphere, whereas non-biobased products derived from fossil fuels add new, fossil carbon to the atmosphere.

Manufacturers of qualifying biobased products under the preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the BEES analysis, which examines 11 different environmental parameters, including human health, or the comparable ASTM D7075. Therefore, USDA encourages Federal procurement agencies to examine all available information on the environmental and human health effects of products when making their purchasing decisions.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's JWOD online catalog (<http://www.jwodcatalog.com>) indicated that three of the items being proposed today ("general purpose household cleaners", "industrial cleaners", and "multipurpose cleaners") are available through the AbilityOne Program. While none of the specific products within these items are identified in the JWOD online catalog as being biobased products, there currently are biobased cleaning products available from at least one NIB affiliate. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other items being proposed for designation today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

Interagency Council. USDA has created, and is chairing, an "interagency council" with membership selected from among Federal stakeholders to the preferred procurement program. To augment its own research, USDA consults with this council in identifying the order of item designation, manufacturers producing and marketing products that fall within an item proposed for designation, performance

¹ Reference to these standards does not represent or imply any endorsement by USDA.

standards used by Federal agencies evaluating products to be procured, and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing and for the BEES analytical tool. Based on these results, USDA will then propose new items for designation for preferred procurement.

As stated in the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA plans to identify approximately 10 items in each future rulemaking. USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with certainty which items will be presented in each of the future rulemakings. Items may be added or dropped and the information necessary to designate an item may take more time to obtain than an item lower on the prioritization list.

III. Summary of Today's Proposed Rule

USDA is proposing to designate the following nine items for preferred procurement: Chain and cable lubricants; corrosion preventatives; food cleaners; forming lubricants; gear lubricants; general purpose household cleaners; industrial cleaners; multipurpose cleaners; and parts wash solutions. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

In today's proposed rule, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these items is not presented in this notice. Further, USDA has reached an agreement with manufacturers not to publish their names in the **Federal Register** when designating items. This agreement was reached to encourage manufacturers to

submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers of products within the designated item to voluntarily make their names and other contact information available for the BioPreferred Web site.

Warranties. Some of the items, including subcategories, being proposed for designation today may affect maintenance warranties. As time and resources allow, USDA will work with original equipment manufacturers (OEMs) on addressing any effect the use of biobased products may have on their maintenance warranties. At this time, however, USDA does not have information available as to whether or not OEMs will state that the use of these products will void their maintenance warranties. This does not mean that use of biobased products will void warranties, only that USDA does not currently have such information. USDA encourages manufacturers of biobased products to test their products against all relevant standards, including those that affect warranties, and to work with OEMs to ensure that biobased products will not void maintenance warranties when used. Whenever manufacturers of biobased products find that existing performance standards for maintenance warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. If, in spite of these efforts, there is insufficient information regarding the use of a biobased product and its effect of maintenance warranties, USDA notes that the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on the BioPreferred Web site.

Additional Information. USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Web site before a procuring agency asks for it, in order to make the preferred program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through e-mail and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the

importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: <http://www.biopREFERRED.gov>.

Comments. USDA invites comment on the proposed designation of these items, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. One item, "gear lubricants," may overlap with one of the products designated under EPA's Comprehensive Procurement Guideline for Products Containing Recovered Material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting product specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material as well as non-biobased products.

2. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for any of the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

3. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the BioPreferred Web site. This information will then be available to Federal procuring agencies and will assist them in making "best value" purchase decisions. When possible, please provide appropriate documentation to support the

environmental and human health attributes you describe.

4. Several items (i.e., “corrosion preventatives,” “industrial cleaners,” and “multipurpose cleaners”) have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing minimum biobased content levels for these items that would allow a high percentage of the tested products to be eligible for preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these items and whether there are potential subcategories within the items that should be considered.

5. USDA considered combining the proposed items “gear lubricants,” “chain and cable lubricants,” and “forming lubricants” into a single designated item with multiple subcategories. The decision to propose the items separately was based largely on the differences in functional performance between the items. While the basic purpose of products within each of these items is to provide lubrication, the applications and the conditions under which they perform are very different. USDA requests comments from procuring agencies and manufacturers of products within these items specifically addressing the advantages and disadvantages of these items being designated separately versus combined into a single item with subcategories.

All comments should be submitted as directed in the **ADDRESSES** section above.

To assist you in developing your comments, the background information used in proposing these items for designation has been assembled in a technical support document, “Technical Support for Proposed Rule—Round 5 Designated Items,” which is available on the BioPreferred Web site. The technical support document can be located by clicking on the Proposed and Final Regulations link on the left side of the BioPreferred Web site’s home page (<http://www.biopreferred.gov>). At the BioPreferred Web site, click on the Proposed and Final Regulations link on the left side of the page. At the next screen, click on the Supporting Documentation link under Round 5 Designated Items under the Proposed Regulations section. This will bring you to the link to the technical support document.

IV. Designation of Items, Minimum Biobased Contents, and Time Frame

A. Background

In order to designate items (generic groupings of specific products such as crankcase oils or products that contain qualifying biobased fibers) for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items and (2) the economic and technological feasibility of using the items, including the life-cycle costs of the items.

In considering an item’s availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Bio organization) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts individual manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering an item’s economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its cost and performance characteristics. This information is obtained from the sources used to assess an item’s availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life-cycle costs of items proposed for designation, USDA uses the BEES analytical tool to test individual products within each proposed item. The BEES analytical tool measures the environmental performance and the economic performance of a product.

Environmental performance is measured in the BEES analytical tool using the internationally-standardized and science-based, life-cycle assessment approach specified in the International Organization for Standardization (ISO) 14000 standards. The BEES environmental performance analysis, which includes human health as one of its components, is a “cradle-to-grave”

assessment of a product. In it, all stages in the life of a product are analyzed: Raw material production; manufacture; transportation; installation; use; and recycling and waste management. The time period over which environmental performance is measured begins with raw material production and ends with disposal (waste management). The BEES environmental performance analysis also addresses products made from biobased feedstocks.

Economic performance in the BEES analysis is measured using the ASTM Standard E917, “Standard Practice for Measuring Life-Cycle Costs of Buildings and Building Systems,” which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal. The time frame for economic performance extends from the purchase of the product to final disposal. USDA then utilizes the BEES results of individual products within a designated item in its consideration of the life-cycle costs at the item level.

The environmental performance results are reported as both an impact value and as an environmental performance score for 12 different environmental impact areas:

- Acidification,
- Criteria pollutants,
- Ecological toxicity,
- Eutrophication,
- Fossil fuel depletion,
- Global warming,
- Habitat alteration,
- Human health,
- Indoor air quality,
- Ozone depletion,
- Smog, and
- Water intake.

For each environmental impact area, BEES estimates the impact a product has in an area using certain units to standardize impacts. For example, acidification is measured as “millimoles of hydrogen equivalents,” while eutrophication is measured as “grams of nitrogen equivalents.” Thus, for acidification, BEES estimates how many millimoles of hydrogen equivalents and how many grams of nitrogen equivalents a product generates as the result of its production and use. These values are referred to as “impact values” and are calculated on a per functional unit basis. For example, the impact value for eutrophication for a chain and cable lubricant product was estimated to be 105 grams of nitrogen equivalents for one gallon of product (the functional unit).

The impact values for a product are then used to determine the environmental performance scores of a product within each of the 12 environmental impact areas. The

environmental performance score is a measure of the share a product contributes towards the annual per capita U.S. environmental impact in one of the 12 environmental impact areas. For example, the global warming impact value of a chain and cable lubricant product was estimated to be 9,710 grams of carbon dioxide equivalents. The total amount of carbon dioxide equivalents emitted in the United States in one year is divided by the U.S. population to yield a "global warming per person" value. The product's global warming impact value is then divided by the "global warming per person" value to derive the product's share of global warming. Specifically, for this example, the global warming environmental performance score is estimated to be 0.0061. That is, every one gallon of this chain and cable lubricant is estimated to contribute 0.0061 percent to the global warming per person value.

For both the impact values and the environmental performance scores, the BEES analysis uses a single unit of comparison associated with each designated item. The basis for the unit of comparison is the "functional unit," defined so that the products compared within an item are true substitutes for one another. If significant differences have been identified in the useful lives of alternative products within a designated item (e.g., if one product lasts twice as long as another), the functional unit includes reference to a time dimension to account for the frequency of product replacement. The functional unit also accounts for products used in different amounts for equivalent service. For example, one surface coating product may be environmentally and economically preferable to another on a pound-for-pound basis, but may require twice the mass to cover one square foot of surface, and last half as long, as the other product. To account for these performance differences, the functional unit for the surface coating item could be "one square foot of application for 20 years" instead of "one pound of surface coating product." The functional unit provides the critical reference point to which all BEES results for products within an item are scaled. Because functional units vary from item to item, performance comparisons are valid only among products within a designated item.

The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rule can be found in the technical support document for this proposed rule.

As discussed above, the BEES analysis includes information on the environmental performance, human health impacts, and economic performance. In addition, ASTM Standard D7075, which manufacturers may use in lieu of the BEES analytical tool, provides similar information. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the preferred procurement program more efficient.

As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make this information, including manufacturer contact information, available on the BioPreferred Web site in order to then make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided a link on the BioPreferred Web site to the Defense Standardization Program and to General Services Administration (GSA)-related standards lists used as guidance when procuring products. These lists can be accessed through the "Selling to the Federal Government" link on the BioPreferred Web site.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform in order for it to be "acceptable" to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (e.g., 95 percent) of the bacteria must be killed through the use of the product.) The primary source of information on these test methods and performance standards are manufacturers of biobased products within these items. Additional test methods and performance standards are also identified during meetings of the Interagency council and during the review process for each proposed rule. We have listed, under the detailed discussion of each item proposed for

designation (presented in Section IV.B), the functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of products identified during the development of this **Federal Register** notice for these items.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of any other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the BioPreferred Web site.

In gathering information relevant to the analyses discussed above for this proposed rule, USDA has made extensive efforts to contact and request information and product samples within the items proposed for designation. For product information, USDA has attempted to contact representatives of the manufacturers of biobased products identified by the preferred procurement program. For product samples on which to conduct biobased content tests and BEES analysis, USDA has attempted to obtain samples and BEES input information for at least five different suppliers of products within each item in today's proposed rule. However, because the submission of information and samples is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who were willing voluntarily to invest the resources required to gather and submit the information and samples. The data presented are all the data that were submitted in response to USDA requests for information from manufacturers of the products within the items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted are sufficient to support designation of the items in today's proposed rule.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life-cycle costs. For some items, there may be numerous products available. For other items, there may be very few

products currently available. Given the infancy of the market for some items, it is not unexpected that even single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate an item or subcategory for preferred procurement even when there is only a single product with a single supplier. However, USDA has also determined that in such situations it is appropriate to defer the effective preferred procurement date until such time that more than one supplier is identified in order to provide choice to procuring agencies. Similarly, the documented availability, benefits, and life-cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

B. Items Proposed for Designation

USDA uses a model (as summarized below) to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the BioPreferred Web site at <http://www.biopreferred.gov>.

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and manufacturers. These evaluations begin by look at the cost, performance, and availability of products within each item. USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular item?
- Are there a number of manufacturers producing biobased products in this item?
- Are there products available in this item?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will an item create a high demand for biobased feed stock?
- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for

designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for groups of approximately 10 items, a new rulemaking package is developed to designate the items within that group. USDA points out that the list of items may change, with items being added or dropped, and that the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rule, USDA is proposing to designate the following items for the preferred procurement program: Chain and cable lubricants; corrosion preventatives; food cleaners; forming lubricants; gear lubricants; general purpose household cleaners; industrial cleaners; multipurpose cleaners; and parts wash solutions. USDA has determined that each of these proposed items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on the items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life-cycle costs.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products. In today's proposed rule, one item may overlap with the EPA-designated recovered content product "Re-refined Lubricating Oils." This item is "gear lubricants." For this item, USDA is requesting that information on the qualifying biobased "gear lubricants" be made available by their manufacturers to assist Federal agencies in determining if an overlap exists between "gear lubricants" and "Re-refined Lubricating Oils" (the applicable EPA-designated recovered content product).

As noted earlier in this preamble, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the BioPreferred Web site.

Exemptions. As explained in the May 14, 2008 **Federal Register** notice (73 FR 27928) promulgating the Round 2 designated items, the National Aeronautics and Space Administration (NASA) and the Department of Defense (DoD) are exempt from the procurement preference requirements that would be afforded to the items contained in today's proposed rule with respect to products used in space applications and combat and combat-related applications, respectively. In other words, they would apply to operations underlying NASA's and DoD's mission, such as janitorial services contracts, but not to uses on the space shuttle and military equipment. These "blanket" exemptions are contained in subpart A of part 2902. Therefore, today's proposed rule would not apply to NASA and DoD, as provided in subpart A of part 2902.

Although each item in today's proposed rule would be exempt from the procurement preference requirement, this exemption does not extend to contractors performing work for NASA or DoD other than direct maintenance and support of the space shuttle and combat equipment. For example, if a contractor is producing a part for use on the space shuttle, the metalworking fluid the contractor uses to produce the part should be biobased (provided it meets the specifications for metalworking). The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space applications. For example, if the part being produced by the contractor would actually be part of the space shuttle, then the exemption applies.

USDA points out that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products. If manufacturers of biobased products can meet the concerns of these two agencies, USDA is willing to reconsider such exemptions on an item-by-item basis.

Each of the proposed designated items are discussed in the following sections.

1. Chain and Cable Lubricants

Chain and cable lubricants are products designed to provide lubrication for such applications as bar and roller chains, sprockets, and wire

ropes and cables. The products may also be designed to prevent rust and corrosion in these applications.

USDA identified 20 different manufacturers producing 37 individual biobased chain and cable lubricant products. These 20 manufacturers do not necessarily include all manufacturers of biobased chain and cable lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this item, the two test methods identified by manufacturers of products within this item are:

Test Methods

- Shake Flask Test (CG-2000) used by the lubricant industry to evaluate biodegradability (Environmental Protection Agency #560/6-82-003); and
- Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (Environmental Protection Agency #600/4-90-027).

USDA contacted procurement officials with various procuring agencies

including the GSA, several offices within the Defense Logistics Agency, the OFEE, USDA Departmental Administration, the National Park Service, EPA, Oak Ridge National Laboratory, and OMB in an effort to gather information on the purchases of chain and cable lubricants and products within the other eight items proposed for designation today. Communications with these officials led to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products within the proposed designated items is not possible at this time.

Most of the contacted officials reported that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Using terms that best match the items in today's proposed rule, USDA queried the GSA database for Federal purchases of products within today's proposed items. The results indicate purchases of products within items in today's proposed rule. The results of this inquiry can be found in the technical support document for this proposed rule. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products.

USDA also investigated the Web site *FEDBIZOPPS.gov*, a site which lists Federal contract purchase opportunities greater than \$25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's proposed rule. Therefore, USDA has been unable to obtain data on the amount of chain and cable lubricants purchased by procuring agencies. However, Federal agencies perform, or procure contract services to perform, activities, such as maintenance, clean-up, and tree removal, in which chain and cable lubricants are used. For example, although quantities were not obtained, the National Park Service is known to be using biobased chain and cable lubricants at some of its parks. Thus, there is a need for chain and cable lubricants. Designation of "chain and cable lubricants" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased chain and cable lubricants was performed for three of the products using the BEES analytical tool. The impact values for these three lubricants are presented in Table 1a. The environmental performance scores are presented in Table 1b and in Figure 1.

TABLE 1A—IMPACT VALUES FOR CHAIN AND CABLE LUBRICANTS

Environmental impact area	Units	Sample A	Sample B	Sample C
Acidification	millimoles of hydrogen ion equivalents	7,210	6,470	5,130
Criteria Air Pollutants	micro Disability-Adjusted Life Years	0.532	0.467	0.840
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	77.1	69.7	1,950
Eutrophication	grams of nitrogen equivalent	105	94.6	246
Fossil Fuel Depletion	megajoules of surplus energy	43.6	39.9	83.6
Global Warming	grams of carbon dioxide equivalents	9,710	8,660	29,500
Habitat Alteration	threatened and endangered species count	0	0	0
Human Health	grams of toluene equivalent	61,500	54,800	316,000
Indoor Air	grams of total volatile organic compounds	0	0	0
Ozone Depletion	grams of chloroflouro-carbon-11 equivalents	1.15E-07	9.69E-08	1.30E-04
Smog	grams of nitrogen oxide equivalents	124	112	95.9
Water Intake	liters of water	1,430	1,290	6,530
Functional Unit	1 gallon.			

TABLE 1B—ENVIRONMENTAL PERFORMANCE SCORES FOR CHAIN AND CABLE LUBRICANTS

Environmental impact area	Sample A	Sample B	Sample C
Total Environmental Performance Score ¹	0.0674	0.0606	0.4202
Acidification (5%)	0.0000	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0001	0.0003
Ecological Toxicity (11%)	0.0104	0.0094	0.2630
Eutrophication (5%)	0.0272	0.0246	0.0640
Fossil Fuel Depletion (5%)	0.0062	0.0056	0.0118
Global Warming (16%)	0.0061	0.0054	0.0184
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.0043	0.0038	0.0219

TABLE 1B—ENVIRONMENTAL PERFORMANCE SCORES FOR CHAIN AND CABLE LUBRICANTS—Continued

Environmental impact area	Sample A	Sample B	Sample C
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.0049	0.0044	0.0038
Water Intake (3%)	0.0081	0.0073	0.0370
Economic Performance (Life-cycle Costs (\$)) ²	10.17	13.78	20.20
First Cost	10.17	13.78	20.20
Future Cost (3.9%)	(³)	(³)	(³)
Functional Unit	1 gallon.		

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

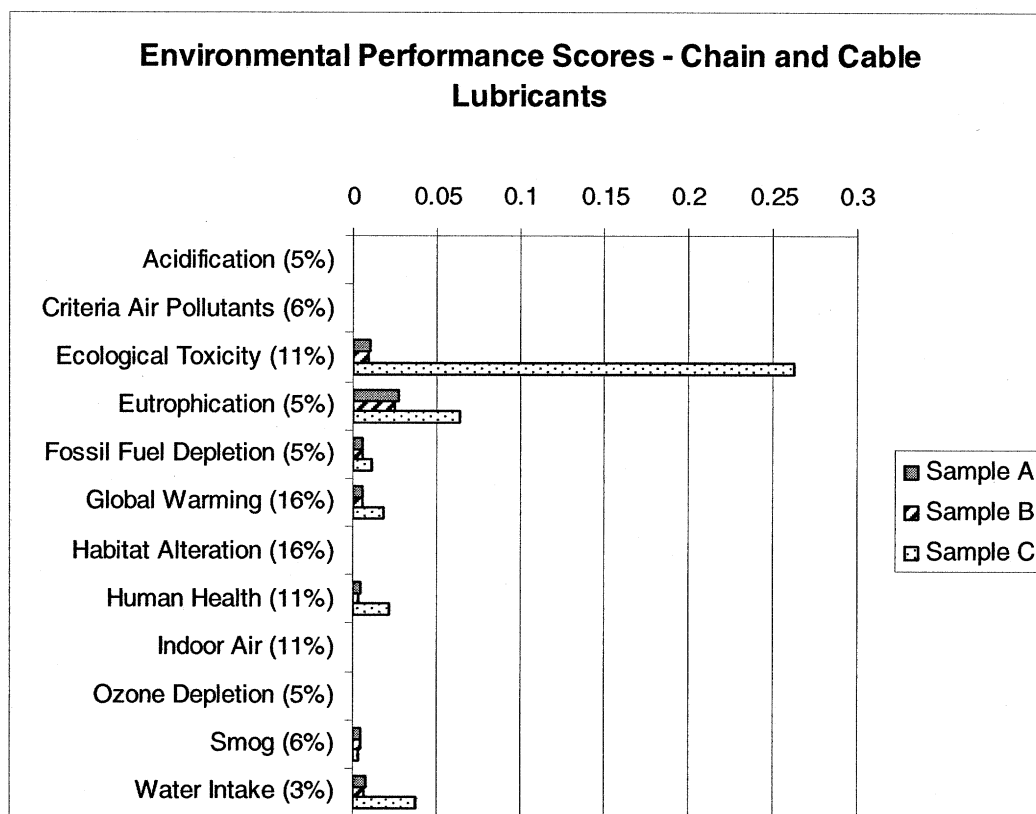


Figure 1. BEES Environmental Performance Scores for Chain and Cable Lubricants

As seen in Table 1b, for the analyzed chain and cable lubricants, the total environmental performance score ranges from 0.0606 to 0.4202 points per gallon of product and the life-cycle costs range from \$10.17 to \$20.20 (present value dollars) per gallon of product.

When evaluating the environmental performance scores presented in Table 1b, as well as in the subsequent tables presented in this preamble, it should be noted that comparisons of the environmental performance scores are

valid only among products within a designated item. Thus, comparisons of the scores presented in Table 1b and the scores presented in tables for other proposed designated items are not meaningful. On the other hand, one can compare the impact values reported in Table 1a with those in the other, corresponding impact value tables. But such a comparison would only be useful if the compared products would be used as substitutes for each other.

The numbers in parentheses following each of the 12 environmental impacts listed in the tables presenting the environmental performance scores in this preamble indicate weighting factors. The weighting factors represent the relative importance of the 12 environmental parameters, including human health impacts, which contribute to the BEES environmental performance score. They are derived from lists of the relative importance of these parameters developed by the EPA

Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower environmental performance score is better than a higher score.

Life-cycle costs presented in the tables in this preamble are per the appropriate functional unit for the proposed designated item. Future costs are discounted to present value using the OMB discount rate of 3.9 percent.

Present value dollars presented in this preamble represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented in this preamble reflect 2006 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rule can be found at <http://www.biopreferred.gov>.

2. Corrosion Preventatives

Corrosion preventatives are products used to prevent the deterioration (corrosion) of metals.

USDA identified 15 different manufacturers producing 97 individual biobased corrosion preventatives

products. These 15 manufacturers do not necessarily include all manufacturers of biobased corrosion preventatives, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods and one performance standard used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance, applicable to products within this item, the test methods and performance standard identified by manufacturers of products within this item, are:

Test Methods

- ASTM D1735, "Standard Practice for Testing Water Resistance of Coatings Using Water Fog Apparatus;"
- ASTM D1748, "Standard Test Method for Rust Protection by Metal Preservatives in the Humidity Cabinet;"
- ASTM D445, "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);"
- ASTM D92, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;" and
- ASTM D97, "Standard Test Method for Pour Point of Petroleum Products."

Performance Standards

- National Association of Corrosion Engineers #TM0374–2001, Laboratory Screening Tests to Determine the Ability of Scale Inhibitors to Prevent the Precipitation of Calcium Sulfate and Calcium Carbonate from Solution (for Oil and Gas Production Systems).

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on "Chain and Cable Lubricants". These attempts were largely unsuccessful. However, various Federal agencies procure corrosion preventatives, or procure contract services such as maintenance services, that use corrosion preventatives. Thus, they have a need for corrosion preventatives. Designation of "corrosive preventatives" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of corrosion preventatives was performed for two of the products using the BEES analytical tool. The impact values for these two corrosion preventatives are presented in Table 2a. The environmental performance scores are presented in Table 2b and in Figure 2.

TABLE 2A—IMPACT VALUES FOR CORROSION PREVENTATIVES

Environmental impact area	Units	Sample A	Sample B
Acidification	millimoles of hydrogen ion equivalents	13,300	26,000
Criteria Air Pollutants	micro Disability-Adjusted Life Years	1.79	2.18
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	141	291
Eutrophication	grams of nitrogen equivalent	120	360
Fossil Fuel Depletion	megajoules of surplus energy	652	301
Global Warming	grams of carbon dioxide equivalents	19,900	37,500
Habitat Alteration	threatened and endangered species count	0	0
Human Health	grams of toluene equivalent	559,000	2.36E+07
Indoor Air	grams of total volatile organic compounds	0	0
Ozone Depletion	grams of chlorofluoro-carbon-11 equivalents	1.98E-06	1.88E-05
Smog	grams of nitrogen oxide equivalents	245	454
Water Intake	liters of water	1,570	4,870
Functional Unit	5 gallons.		

TABLE 2B—ENVIRONMENTAL PERFORMANCE SCORES FOR CORROSION PREVENTATIVES

Environmental impact area	Sample A	Sample B
Total Environmental Performance Score ¹	0.2129	0.2684
Acidification (5%)	0	0
Criteria Air Pollutants (6%)	0.0006	0.0007
Ecological Toxicity (11%)	0.0190	0.0389
Eutrophication (5%)	0.0312	0.0937
Fossil Fuel Depletion (5%)	0.0924	0.0431
Global Warming (16%)	0.0124	0.0236
Habitat Alteration (16%)	0	0
Human Health (11%)	0.0387	0.0228
Indoor Air (11%)	0	0

TABLE 2B—ENVIRONMENTAL PERFORMANCE SCORES FOR CORROSION PREVENTATIVES—Continued

Environmental impact area	Sample A	Sample B
Ozone Depletion (5%)	0	0
Smog (6%)	0.0097	0.0180
Water Intake (3%)	0.0089	0.0276
Economic Performance (Life-cycle Costs (\$)) ²	114.75	77.09
First Cost	114.75	77.09
Future Cost (3.9%)	⁽³⁾	
Functional Unit	5 gallons.	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

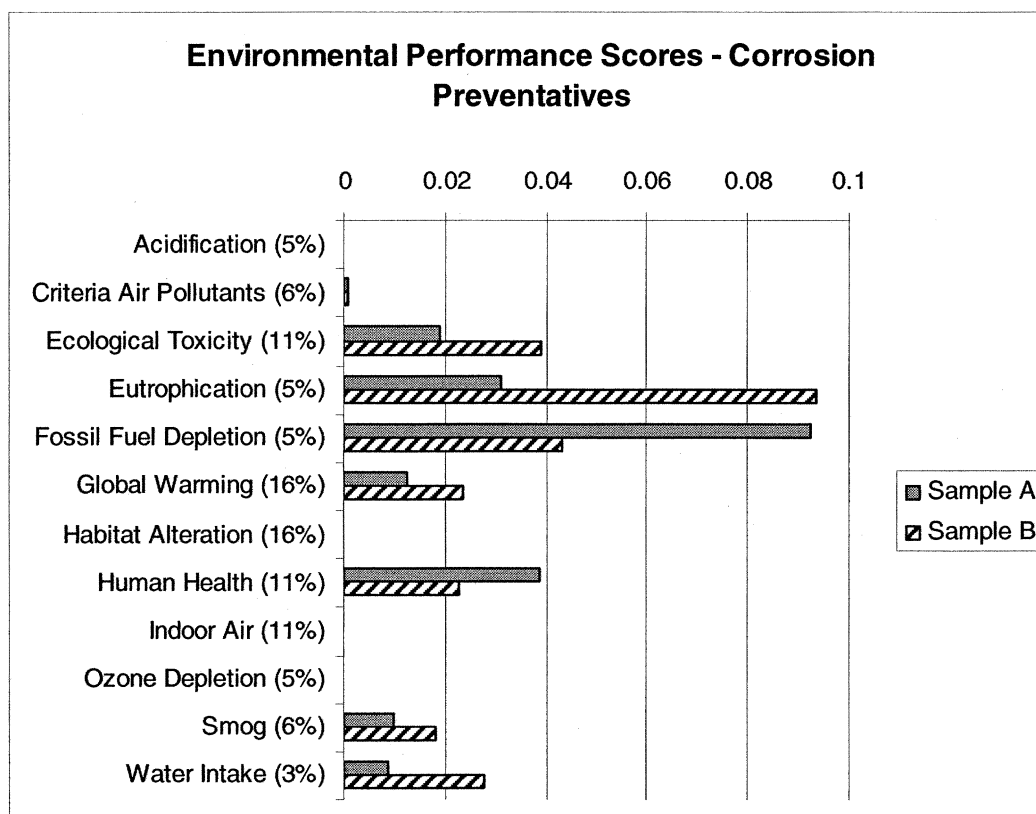


Figure 2. BEES Environmental Performance Scores for Corrosion Preventatives

As seen in Table 2b, the total environmental performance scores for the two corrosion preventatives analyzed are 0.2194 and 0.2684 per five gallons of product and the respective life-cycle costs are \$114.75 and \$77.09 (present value dollars) per five gallons of product.

3. Food Cleaners

Food cleaners are anti-microbial products used to clean the outer layer of

various food products, such as fruits, vegetables, and meats.

USDA identified 11 different manufacturers producing 15 individual biobased food cleaner products. These 11 manufacturers do not necessarily include all manufacturers of biobased food cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and

stakeholders identified several test methods, one performance standard, and one other measure of performance used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- Federal Test Method Standard #536A, Soap and soap products (including synthetic detergents) sampling and testing.

Performance Standards

- Boeing #D6-7127, Cleaning Interiors of Commercial Transport Aircraft; and
- South Coast Air Quality Management District, certification as a Clean Air Solvent.

Product Certifications and Other Measures

- U.S. Navy #Navsea 6840—U.S. Navy surface ship (non-submarine) authorized chemical cleaning products and dispensing systems.

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on “Chain and Cable Lubricants.” These attempts were largely unsuccessful. However, Federal agencies procure such products or contract for food

preparation services that use such products. Thus, there is a need for food cleaners. Designation of biobased “food cleaners” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased food cleaners was performed for one of the products using the BEES analytical tool. The impact values for this food cleaner are presented in Table 3a. The environmental performance scores are presented in Table 3b and in Figure 3.

TABLE 3A—IMPACT VALUES FOR FOOD CLEANERS

Environmental impact area	Units	Sample A
Acidification	millimoles of hydrogen ion equivalents	81.8
Criteria Air Pollutants	micro Disability-Adjusted Life Years	0.0216
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	0.774
Eutrophication	grams of nitrogen equivalent	0.104
Fossil Fuel Depletion	megajoules of surplus energy	2.43
Global Warming	grams of carbon dioxide equivalents	148
Habitat Alteration	threatened and endangered species count	0
Human Health	grams of toluene equivalent	2,110
Indoor Air	grams of total volatile organic compounds	0
Ozone Depletion	grams of chlorofluoro-carbon-11 equivalents	7.98E-08
Smog	grams of nitrogen oxide equivalents	1.09
Water Intake	liters of water	4.39
Functional Unit		1 gallon.

TABLE 3B—ENVIRONMENTAL PERFORMANCE SCORES FOR FOOD CLEANERS

Environmental impact area	Sample A
Total Environmental Performance Score ¹	0.0006
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0000
Ecological Toxicity (11%)	0.0001
Eutrophication (5%)	0.0000
Fossil Fuel Depletion (5%)	0.0003
Global Warming (16%)	0.0001
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0001
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0000
Water Intake (3%)	0.0000
Economic Performance (Life-cycle Costs (\$)) ²	4.00
First Cost	4.00
Future Cost (3.9%)	(³)
Functional Unit	Gallon of food cleaner

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

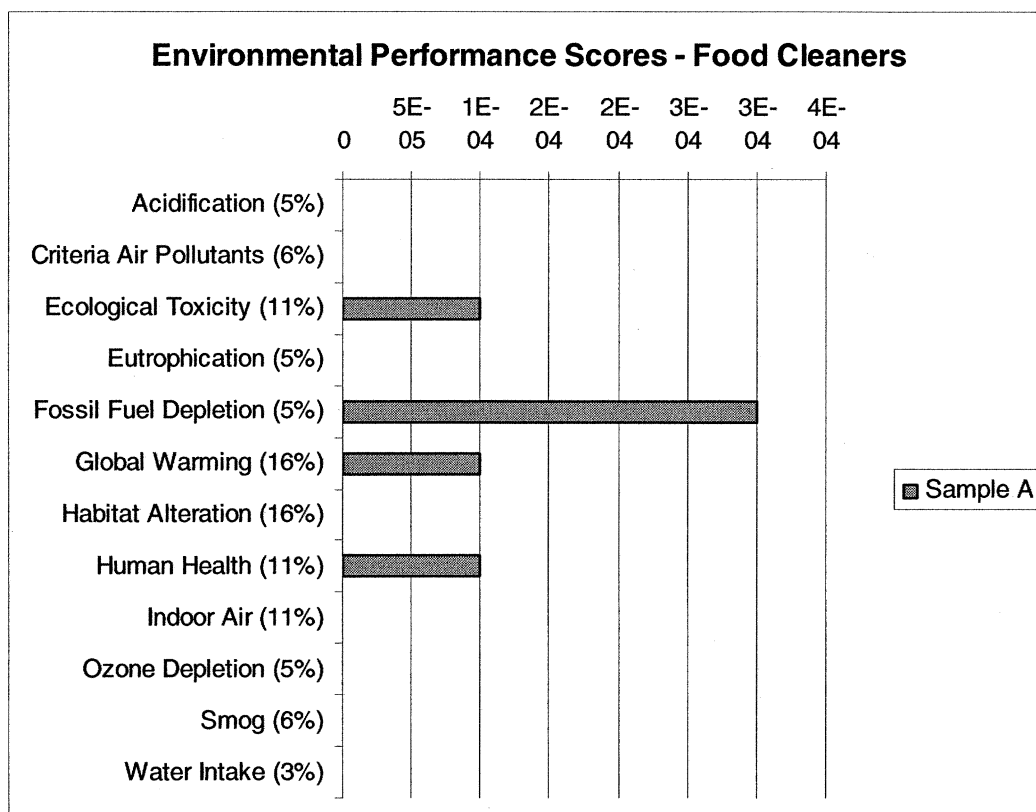


Figure 3. BEES Environmental Performance Scores for Food Cleaners

As seen in Table 3b, the total environmental performance score and the life-cycle costs of the food cleaner analyzed are, respectively, 0.0006 points per gallon of product and \$4.00 (present value dollars) per gallon of product.

4. Forming Lubricants

Forming lubricants are products designed to provide lubricity during metalworking applications that are performed under extreme pressure conditions. Such applications include tube bending, stretch forming, press braking, and swaging.

USDA identified three different manufacturers producing 13 individual biobased forming lubricant products. These three manufacturers do not necessarily include all manufacturers of biobased forming lubricants, merely those identified during USDA information gathering activities.

Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified two test methods (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- Boeing #BAC 5001-4 Flareless Tube End Fabrication; and
- Testing of chemical substances under the Toxic Substances Control Act (EPA #560/6-82-003).

USDA attempted to gather data on the potential market for biobased products

within the Federal government using the procedure described in the section on "Chain and Cable Lubricants." These attempts were largely unsuccessful. However, Federal agencies own and operate metalworking machinery that operates under extreme pressure. In addition, Federal agencies contract for services involving the use of similar equipment. Thus, there is a need for forming lubricants. Designation of "forming lubricants" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of forming lubricants was performed for one of the products using the BEES analytical tool. The impact values for this forming lubricant are presented in Table 4a. The environmental performance scores are presented in Table 4b and in Figure 4.

TABLE 4A—IMPACT VALUES FOR FORMING LUBRICANTS

Environmental impact area	Units	Sample A
Acidification	millimoles of hydrogen ion equivalents	1,320
Criteria Air Pollutants	micro Disability-Adjusted Life Years	0.267
Ecological Toxicity	grams of 2,4-dichloro-phenoxyacetic acid	32.7
Eutrophication	grams of nitrogen equivalent	11.3
Fossil Fuel Depletion	megajoules of surplus energy	76.0

TABLE 4A—IMPACT VALUES FOR FORMING LUBRICANTS—Continued

Environmental impact area	Units	Sample A
Global Warming	grams of carbon dioxide equivalents	4,450
Habitat Alteration	threatened and endangered species count	0
Human Health	grams of toluene equivalent	60,000
Indoor Air	grams of total volatile organic compounds	0
Ozone Depletion	grams of chloroflouro-carbon-11 equivalents	2.59E-05
Smog	grams of nitrogen oxide equivalents	25.6
Water Intake	liters of water	164
Functional Unit		1 gallon.

TABLE 4B—ENVIRONMENTAL PERFORMANCE SCORES FOR FORMING LUBRICANTS

Environmental impact area	Sample A
Total Environmental Performance Score ¹	0.0271
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0001
Ecological Toxicity (11%)	0.0044
Eutrophication (5%)	0.0029
Fossil Fuel Depletion (5%)	0.0108
Global Warming (16%)	0.0028
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0042
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0010
Water Intake (3%)	0.0009
Economic Performance (Life-cycle Costs (\$)) ²	18.50
First Cost	18.50
Future Cost (3.9%)	(³)
Functional Unit	(⁴)

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ One gallon of forming lubricant.

As seen in Table 4b, the total environmental performance score and the life-cycle cost of the submitted

forming lubricant are, respectively, 0.0271 points per gallon of product and

\$18.50 (present value dollars) per gallon of product.

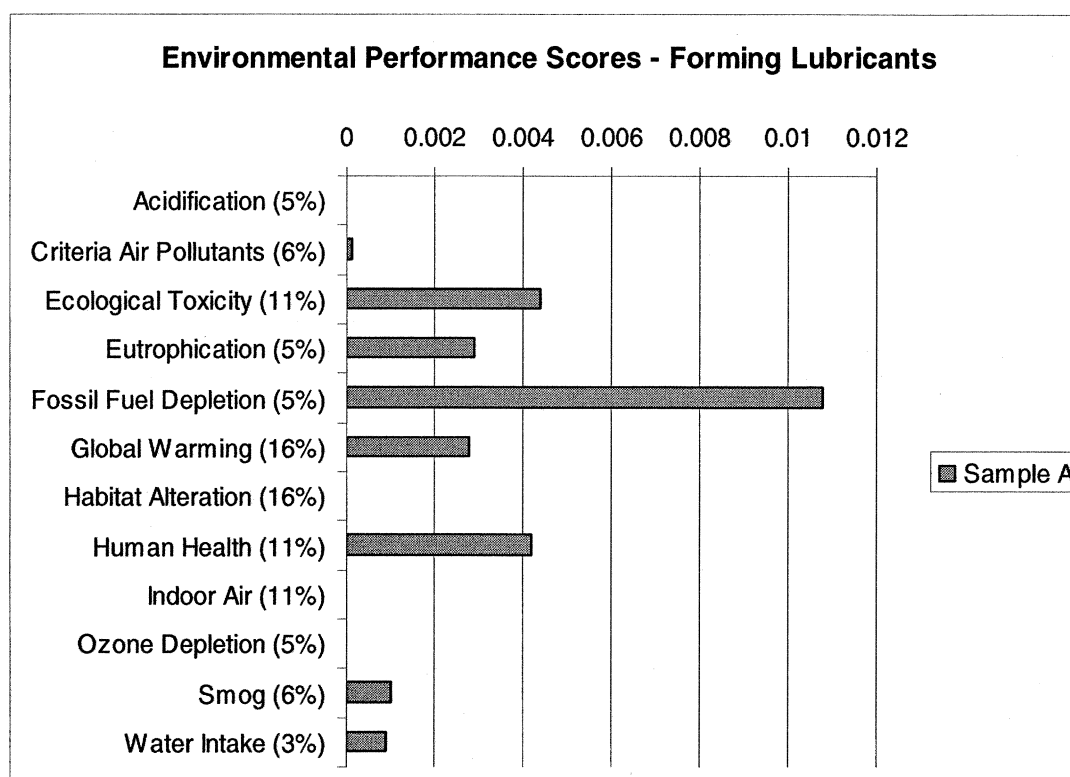


Figure 4. BEES Environmental Performance Scores for Forming Lubricants

5. Gear Lubricants

Gear lubricants are substances, such as greases and oils, which reduce friction when applied to a toothed machine part (such as a wheel or cylinder) that meshes with another toothed part to transmit motion or to change speed or direction. Unlike penetrating lubricants, which would be applied to frozen gears to loosen them, gear lubricants are designed to be applied to functional gears to reduce friction while in operation.

Qualifying products within this item may overlap with the EPA-designated recovered content product: "Re-refined Lubricating Oils".

USDA identified nine different manufacturers producing 24 individual biobased gear lubricant products. These nine manufacturers do not necessarily include all manufacturers of biobased gear lubricants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified test methods, performance standards, and other measures of performance used in evaluating the performance of products within this item. While there may be

additional test methods, as well as performance standards, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- ASTM D1404/D1404M, "Standard Test Method for Estimation of Deleterious Particles for Lubricating Grease;"
- ASTM D2270, "Standard Practice for Calculating Viscosity Index from Kinematic Viscosity at 40 and 100 °C;"
- ASTM D2619, "Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);"
- ASTM D2711, "Standard Test Method for Demulsibility Characteristics of Lubricating Oils;"
- ASTM D445, "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);"
- ASTM D5864, "Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;"
- ASTM D665, "Standard Test Method for Rust-Preventing

Characteristics of Inhibited Mineral Oil in the Presence of Water;"

- ASTM D892, "Standard Test Method for Foaming Characteristics of Lubricating Oils;"
- ASTM D92, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;"
- ASTM D97, "Standard Test Method for Pour Point of Petroleum Products;"
- ASTM D974, "Standard Test Method for Acid and Base Number by Color-Indicator Titration;"
- ASTM D2266, "Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);"
- Testing of chemical substances under the Toxic Substances Control Act (EPA #560/6-82-003);
- International Organization for Standardization #ISO 150—Specifies the requirements and the corresponding methods of test for raw, refined, and boiled linseed oils for paints and varnishes;
- DIN 51517—Lubricants—Lubricating oils—Part 1: Lubricating oils C Requirements;
- FGZ (DIN51354), Gear wheel twisting/tension testing machine for lubricants;
- ISO 46—oil viscosity grade;
- SAE 30—viscosity grade;

- SAE GearGrade 80W90—viscosity grade; and
- ISO 90—oil viscosity grade.

Performance Standards

- American Petroleum Institute #API GL-3—Lubricant with light EP effect for transmissions and non-hypoid gear drives;
- American Petroleum Institute #API GL-4—Generally equivalent to military specification MIL-L-2105 for manual transmissions and spiral bevel gears engaged in moderate service (API GL-4 rates a gear lubricant's performance);
- AGMA 2-8A, R&O and EP gear lubes grades;
- ANSI/AGMA 9005-E02, Industrial Gear Lubricant; and
- DB s1.53.101, Meets or exceeds requirements of David Brown performance requirement.

Product Certifications and Other Measures

- American Petroleum Institute #API GL-1—Designates the type of service characteristics of automotive spiral-bevel and worm gear axles as well as some manually-operated transmissions operating under such mild conditions of low unit pressures and sliding velocities that straight mineral oil can be used satisfactorily; and
- American Petroleum Institute #API GL-2—Designates the type of service characteristics of automotive type worm gear axles operating under such conditions of load, temperature, and sliding velocities that lubricants satisfactory for API GL-1 service will not suffice (obsolete).

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on "Chain and Cable Lubricants." These

attempts were largely unsuccessful. However, many Federal agencies own or operate machinery, or procure contract services that require the use of machinery, that require gear lubricants. When EPA researched its designation of re-refined lubricating oils, including gear oil, the Defense Logistic Agency informed EPA that it had specifications for, and sold, gear oils. Thus, there is a need for gear lubricants. Designation of biobased "gear lubricants" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased gear lubricants was performed for two of the products using the BEES analytical tool. The impact values for these two gear lubricants are presented in Table 5a. The environmental performance scores are presented in Table 5b and in Figure 5.

TABLE 5A—IMPACT VALUES FOR GEAR LUBRICANTS

Environmental impact area	Units	Sample A	Sample B
Acidification	millimoles of hydrogen ion equivalents	25,000	10,200
Criteria Air Pollutants	micro Disability-Adjusted Life Years	2.79	2.96
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	242	287
Eutrophication	grams of nitrogen equivalent	308	47.0
Fossil Fuel Depletion	megajoules of surplus energy	479	453
Global Warming	grams of carbon dioxide equivalents	35,800	34,200
Habitat Alteration	threatened and endangered species count	0	0
Human Health	grams of toluene equivalent	1,250,000	553,000
Indoor Air	grams of total volatile organic compounds	0	0
Ozone Depletion	grams of chlorofluoro-carbon-11 equivalents	1.35E-06	1.04E-05
Smog	grams of nitrogen oxide equivalents	413	163
Water Intake	liters of water	5,900	633
Functional Unit		5 gallons.	

TABLE 5B—ENVIRONMENTAL PERFORMANCE SCORES FOR GEAR LUBRICANTS

Environmental impact area	Sample A	Sample B
Total Environmental Performance Score ¹	0.3405	0.1856
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0009	0.0009
Ecological Toxicity (11%)	0.0326	0.0387
Eutrophication (5%)	0.0802	0.0122
Fossil Fuel Depletion (5%)	0.0679	0.0641
Global Warming (16%)	0.0224	0.0214
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0867	0.0383
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0164	0.0064
Water Intake (3%)	0.0334	0.0036
Economic Performance (Life-cycle Costs (\$)) ²	63.08	87.50
First Cost	63.08	87.50
Future Cost (3.9%)	(³)	(³)
Functional Unit	5 gallons of gear lubricant.	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

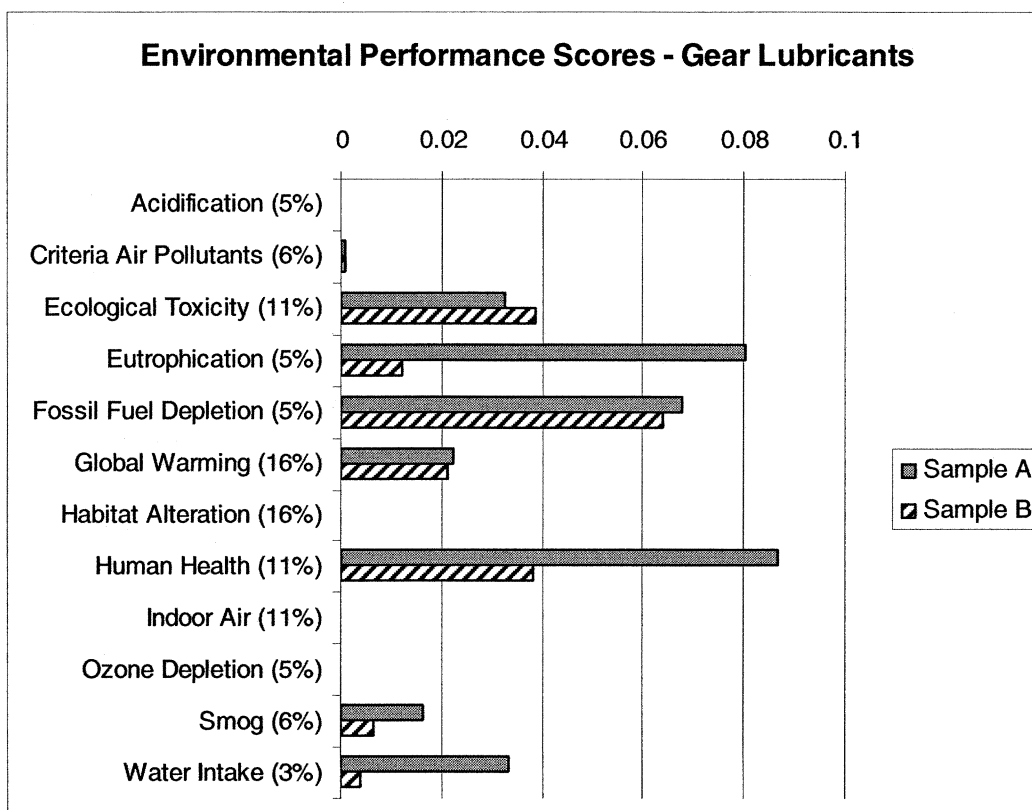


Figure 5. BEES Environmental Performance Scores for Gear Lubricant

As seen in Table 5b, the total environmental performance scores are 0.1856 and 0.3405 points per five gallons of product. The life-cycle costs of the submitted biobased gear lubricants are \$63.08 to \$87.50 (present value dollars) per five gallons of product.

6. General Purpose Household Cleaners

General purpose household cleaners are substances used to clean common household surfaces found in the living spaces and on the possessions located in households or similar settings. Household cleaner products included in this item are those general purpose household cleaners specifically marketed as suitable for cleaning common household surfaces. In today's proposed rule, the definition of general purpose household cleaners excludes products that are formulated for use as disinfectants. Other products not included in this item are task-specific household cleaners, such as scouring cleaners, toilet bowl cleaners, upholstery cleaners, laundry and dishwashing detergents, spot/stain

removers, oven cleaners, and drain cleaners.

Procuring agencies should note that, as discussed in Section II of this preamble, not all biobased cleaning products are "environmentally preferable" to non-biobased products. Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. When purchasing environmentally preferable cleaning products, Federal agencies should compare the "cradle-to-grave" impacts of the manufacture, use, and disposal of both biobased and non-biobased products in order to determine which product is environmentally preferable.

USDA identified 16 different manufacturers producing 24 individual biobased general purpose household cleaner products. These 16 manufacturers do not necessarily include all manufacturers of biobased general purpose household cleaners, merely those identified during USDA information gathering activities.

Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods, a performance standard, and one other measure of performance (as shown below) used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- Boeing #D6-7127, Cleaning Interiors of Commercial Transport Aircraft;
- ASTM D1308, "Standard Test Method for Effect of Household Chemicals on Clear and Pigmented Organic Finishes";
- Federal Test Method Standard #536A, Soap and Soap Products (Including Synthetic Detergents) sampling and testing; and

• South Coast Air Quality Management District, certification as a “Clean Air Solvent.”

Performance Standards

• Green Seal #8 (GS-8), Green Seal Environmental Standard for Household Cleaners; and

• Boeing #D6-7127, Cleaning Interiors of Commercial Transport Aircraft. Product Certifications and Other Measures

• United States Navy Navsea #6840—Surface ship (non-submarine) authorized chemical cleaning products and dispensing systems; and

• Green Seal #8 (GS-8), Green Seal Environmental Standard for Household Cleaners.

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on “Chain and Cable Lubricants.” These attempts were largely unsuccessful. However, Federal agencies routinely perform cleaning and maintenance activities, or procure cleaning and maintenance services, that use these materials. Thus, they have a need for general purpose household cleaners and for services that require the use of

household cleaners. Designation of “general purpose household cleaners” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased general purpose household cleaners was performed for two of the products using the BEES analytical tool. The impact values for these two general purpose household cleaners are presented in Table 6a. The environmental performance scores are presented in Table 6b and in Figure 6.

TABLE 6A—IMPACT VALUES FOR GENERAL PURPOSE HOUSEHOLD CLEANERS

Environmental impact area	Units	Sample A	Sample B
Acidification	millimoles of hydrogen ion equivalents	4,080	1,510
Criteria Air Pollutants	micro Disability-Adjusted Life Years	1.03	0.657
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	351	8.76
Eutrophication	grams of nitrogen equivalent	27.8	3.24
Fossil Fuel Depletion	megajoules of surplus energy	175	38.8
Global Warming	grams of carbon dioxide equivalents	13,600	3,000
Habitat Alteration	threatened and endangered species count	0	0
Human Health	grams of toluene equivalent	109,000	30,600
Indoor Air	grams of total volatile organic compounds	0	0
Ozone Depletion	grams of chlorofluoro-carbon-11 equivalents	1.95E-04	2.28E-06
Smog	grams of nitrogen oxide equivalents	69.3	23.6
Water Intake	liters of water	389	20.9
Functional Unit	5 gallons.		

TABLE 6B—ENVIRONMENTAL PERFORMANCE SCORES FOR GENERAL PURPOSE HOUSEHOLD CLEANERS

Environmental impact area	Sample A	Sample B
Total Environmental Performance Score ¹	0.1005	0.0127
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0003	0.0002
Ecological Toxicity (11%)	0.0473	0.0012
Eutrophication (5%)	0.0072	0.0008
Fossil Fuel Depletion (5%)	0.0247	0.0055
Global Warming (16%)	0.0085	0.0019
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0076	0.0021
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0027	0.0009
Water Intake (3%)	0.0022	0.0001
Economic Performance (Life-cycle Costs (\$)) ²	65.63	27.50
First Cost	65.63	27.50
Future Cost (3.9%)	(³)	(³)
Functional Unit	5 gallons.	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

As seen in Table 6b, the total environmental performance scores are 0.0127 and 0.1005 points per five

gallons of product. The life-cycle costs of the submitted household cleaners are

\$27.50 and \$65.63 (present value dollars) per five gallons of product.

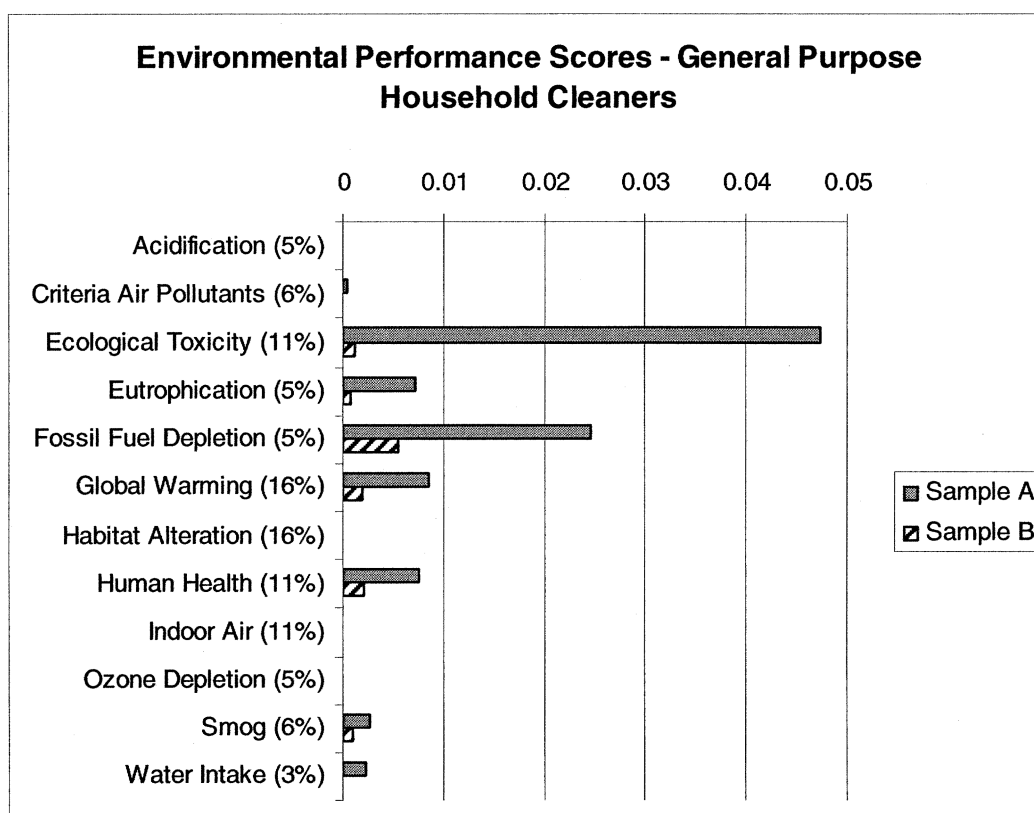


Figure 6. BEES Environmental Performance Scores for General Purpose Household Cleaners

7. Industrial Cleaners

Industrial cleaners are products used to remove contaminants, such as adhesives, inks, paint, dirt, soil, and grease, from parts, products, tools, machinery, equipment, vessels, floors, walls, and other production-related work areas. Cleaning operations are performed for a variety of reasons, such as safety and operability, and to avoid contamination of the products being manufactured or repaired at the facility. The cleaning products within this item are usually solvents, but may take other forms. They may be used in either straight solution or diluted with water in pressure washers, or in hand wiping applications in industrial or manufacturing settings, such as inside vessels.

Cleaners within this item are used in industrial settings in which production processes take place. This distinguishes these types of cleaners from institutional cleaners, which are used in settings where production processes do not take place.

Procuring agencies should note that, as discussed in Section II of this preamble, not all biobased cleaning products are “environmentally preferable” to non-biobased products.

Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. When purchasing environmentally preferable cleaning products, Federal agencies should compare the “cradle-to-grave” impacts of the manufacture, use, and disposal of both biobased and non-biobased products in order to determine which product is environmentally preferable.

USDA identified 59 different manufacturers producing 122 individual biobased industrial cleaner and/or solvent products. The 59 manufacturers do not necessarily include all manufacturers of biobased industrial cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified test methods, performance standards, and other measures of performance used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and

other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- ASTM D445, “Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);”
- ASTM D92, “Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;”
- ASTM D1364, “Standard Test Method for Water in Volatile Solvents (Karl Fischer Reagent Titration Method);” and
- Environmental Protection Agency Method #24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coating.

Performance Standards

- ASTM D446, “Standard Specifications and Operating Instructions for Glass Capillary Kinematic Viscometers;”
- ASTM D13, “Standard Specification for Spirits of Turpentine;”
- ASTM D1836, “Standard Specification for Commercial Hexanes;”

- ASTM D235, “Standard Specification for Mineral Spirits (Petroleum Spirits) (Hydrocarbon Dry Cleaning Spirits);”
- ASTM D3278, “Standard Specification for 2-Ethoxyethyl Acetate (99% Grade);”
- Green Seal #GS-37, Green Seal Environmental Standard for General-Purpose, Bathroom, Glass, and Carpet Cleaners Used for Industrial and Institutional Purposes; and
- Boeing #BAC 5750, Solvent Cleaning.

Product Certifications and Other Measures

- Section 612 of EPA’s Significant New Alternatives Policy (SNAP);
 - Green Seal #GS-37, Green Seal Environmental Standard for General-Purpose, Bathroom, Glass, and Carpet Cleaners Used for Industrial and Institutional Purposes; and
 - EPA’s National Contingency Plan.
- USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on “Chain and Cable Lubricants.” These attempts were largely unsuccessful. However, Federal agencies routinely

use, or procure contract services, such as cleaning and maintenance services, that use industrial cleaners. Thus, there is a need for industrial cleaners. Designation of “industrial cleaners” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased industrial cleaners was performed for three of the products using the BEES analytical tool. The impact values for these three products are presented in Table 7a. The environmental performance scores are presented in Table 7b and in Figure 7.

TABLE 7A—IMPACT VALUES FOR INDUSTRIAL CLEANERS

Environmental impact area	Units	Sample A	Sample B	Sample C
Acidification	millimoles of hydrogen ion equivalents	433	11,100	34,000
Criteria Air Pollutants	micro Disability-Adjusted Life Years	0.134	3.56	16.2
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	79.5	234	76.5
Eutrophication	grams of nitrogen equivalent	0.971	58.7	45.2
Fossil Fuel Depletion	megajoules of surplus energy	16.7	470	133
Global Warming	grams of carbon dioxide equivalents	953	32,600	158,000
Habitat Alteration	threatened and endangered species count	0	0	0
Human Health	grams of toluene equivalent	4,940	291,000	103,000
Indoor Air	grams of total volatile organic compounds	0	0	0
Ozone Depletion	grams of chloroflouro-carbon-11 equivalents	1.66E-08	2.21E-04	5.19E-06
Smog	grams of nitrogen oxide equivalents	15.5	139	198
Water Intake	liters of water	48.7	623	287
Functional Unit	5 gallons of product.			

TABLE 7B—ENVIRONMENTAL PERFORMANCE SCORES FOR INDUSTRIAL CLEANERS

Environmental impact area	Sample A	Sample B	Sample C
Total Environmental Performance Score ¹	0.0152	0.1641	0.1615
Acidification (5%)	0.0000	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0000	0.0011	0.0051
Ecological Toxicity (11%)	0.0107	0.0316	0.0103
Eutrophication (5%)	0.0003	0.0153	0.0118
Fossil Fuel Depletion (5%)	0.0024	0.0665	0.0189
Global Warming (16%)	0.0006	0.0204	0.0989
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.0003	0.0202	0.0071
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.0006	0.0055	0.0078
Water Intake (3%)	0.0003	0.0035	0.0016
Economic Performance (Life-cycle Costs (\$)) ²	8.85	82.00	84.95
First Cost	8.85	82.00	84.95
Future Cost (3.9%)	(³)	(³)	(³)
Functional Unit	Five gallons of product.		

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

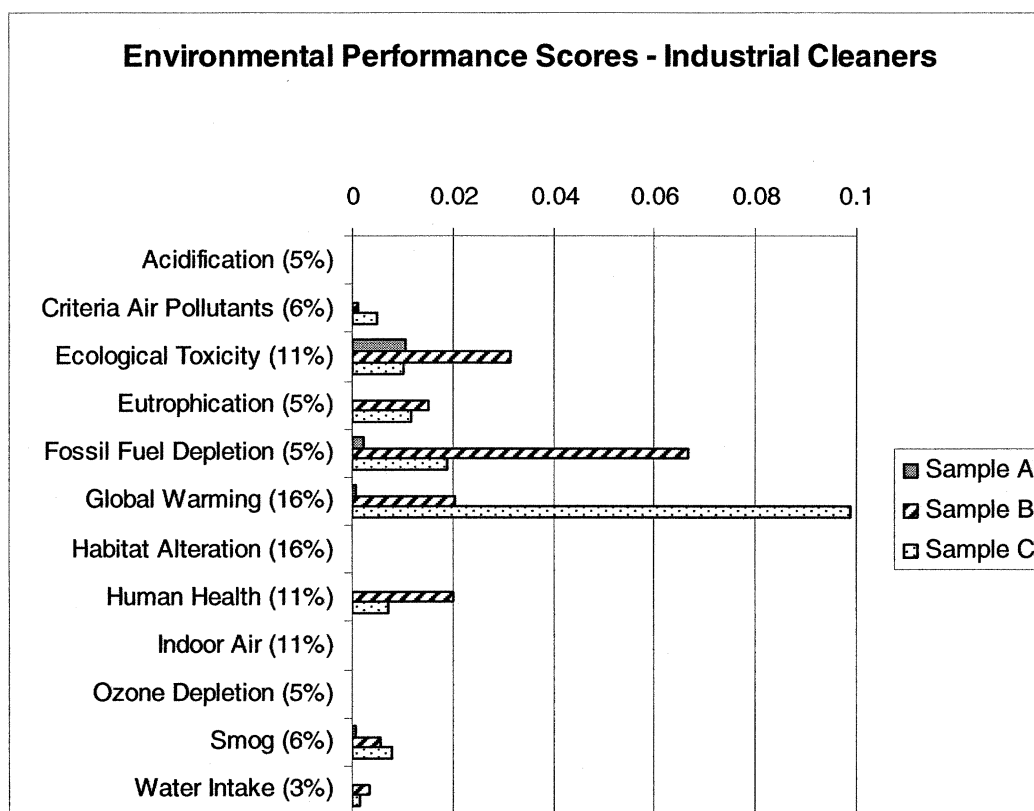


**Figure 7. BEES Environmental Performance Scores
for Industrial Cleaners**

As seen in Table 7b, the total environmental performance scores range from 0.0152 to 0.1641 per five gallons of product. The life-cycle costs of the submitted industrial cleaners range from \$8.85 to \$84.95 (present value dollars) per five gallons of product.

8. Multipurpose Cleaners

Multipurpose cleaners are used to clean dirt, grease, and grime from a variety of items and are used in both industrial and domestic settings. Multipurpose cleaners are intended for broader applications than those cleaners designated as general purpose household cleaners, task-specific cleaners (e.g., bathroom and spa cleaners), and industrial cleaners. In today's proposed rule, the definition of multipurpose cleaners excludes products that are formulated for use as disinfectants.

Procuring agencies should note that, as discussed in Section II of this preamble, not all biobased cleaning products are "environmentally preferable" to non-biobased products. Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment,

and/or workers. When purchasing environmentally preferable cleaning products, Federal agencies should compare the "cradle-to-grave" impacts of the manufacture, use, and disposal of both biobased and non-biobased products in order to determine which product is environmentally preferable.

USDA identified 39 different manufacturers producing 61 individual biobased multipurpose cleaner products. These 39 manufacturers do not necessarily include all manufacturers of biobased multipurpose cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are being used commercially. In addition, manufacturers and stakeholders identified several test methods and other measures of performance and one performance standard used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- ASTM D1298, "Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method";
- ASTM D130, "Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test";
- ASTM D2500, "Standard Test Method for Cloud Point of Petroleum Products";
- ASTM D86, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure";
- Environmental Protection Agency Method #601, Purgeable Halocarbons;
- Environmental Protection Agency Method #602, Purgeable Aromatics;
- Environmental Protection Agency Method #608, Organochlorine Pesticides and PCBs;
- Organization for Economic Cooperation and Development #OECD 301B—CO₂ Evolution Test for Biodegradation;
- Society of Automotive Engineers #APR 1755B—Effect of Cleaning Agents on Aircraft Engine Materials, Stock Loss Test Method;
- Green Seal #GS-37, Green Seal Environmental Standard for General-

Purpose, Bathroom, Glass, and Carpet Cleaners Used for Industrial and Institutional Purposes; and

- Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (EPA #600/4-90-027F).

Performance Standards

- Green Seal #GS-34—Standard Establishing Environmental Requirements for Cleaning/Degreasing Agents.

Product Certifications and Other Measures

- Choice Eco Logo (Canada);
- Acute Dermal Toxicity; and
- Acute Oral Toxicity.

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on “Chain and Cable Lubricants.” These attempts were largely unsuccessful. However, Federal agencies routinely use, or procure contract services that use, multipurpose cleaners in a variety of cleaning and maintenance activities.

Thus, there is a need for multipurpose cleaners. Designation of “multipurpose cleaners” will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased multipurpose cleaners was performed for one of the products using the BEES analytical tool. The impact values for this multipurpose cleaner are presented in Table 8a. The environmental performance scores are presented in Table 8b and in Figure 8.

TABLE 8A—SUMMARY OF BEES RESULTS FOR MULTIPURPOSE CLEANERS—IMPACT VALUES

Environmental impact area	Units	Sample A
Acidification	millimoles of hydrogen ion equivalents	2,910
Criteria Air Pollutants	micro Disability-Adjusted Life Years	1.19
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	158
Eutrophication	grams of nitrogen equivalent	17.5
Fossil Fuel Depletion	megajoules of surplus energy	5.12
Global Warming	grams of carbon dioxide equivalents	4,680
Habitat Alteration	threatened and endangered species count	0
Human Health	grams of toluene equivalent	47,100
Indoor Air	grams of total volatile organic compounds	0
Ozone Depletion	grams of chlorofluoro-carbon-11 equivalents	4.53E-06
Smog	grams of nitrogen oxide equivalents	65.1
Water Intake	liters of water	4,000
Functional Unit		(1)

¹ 1,000 gallons of diluted and ready to use multipurpose cleaner.

TABLE 8B—ENVIRONMENTAL PERFORMANCE SCORES FOR MULTIPURPOSE CLEANERS

Environmental impact area	Sample A
BEES Environmental Performance—Total Score ¹	0.0649
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0004
Ecological Toxicity (11%)	0.0213
Eutrophication (5%)	0.0046
Fossil Fuel Depletion (5%)	0.0072
Global Warming (16%)	0.0029
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0033
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0026
Water Intake (3%)	0.0226
Economic Performance (Life-cycle Costs (\$)) ²	5,950.00
First Cost	5,950.00
Future Cost (3.9%)	(³)
Functional Unit	(⁴)

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

⁴ 1,000 gallons of diluted and ready to use multipurpose cleaner.

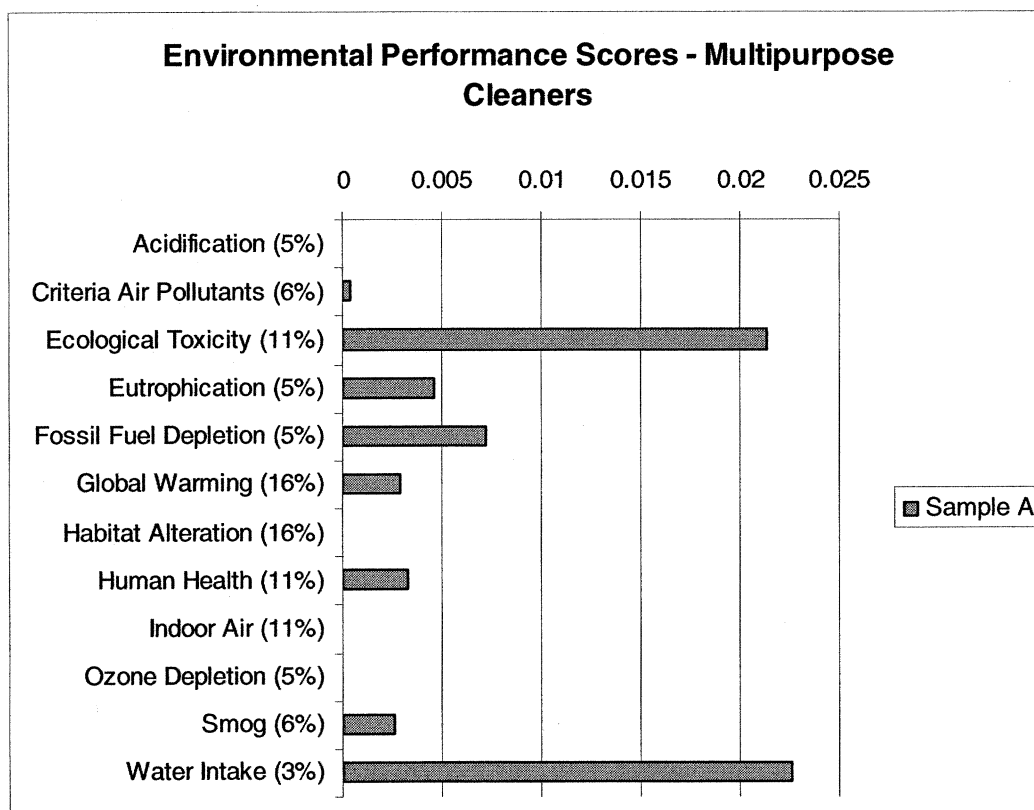


Figure 8. BEES Environmental Performance Scores for Multipurpose Cleaners

As seen in Table 8b, the total environmental performance score and the life-cycle cost for the submitted multipurpose cleaner are, respectively, 0.0649 points per 1,000 gallons of diluted and ready to use product and \$5,950.00 per 1,000 gallons of diluted and ready to use product.

9. Parts Wash Solutions

Parts wash solutions are products used in cleaning and machining parts to remove dirt and grease buildup on used parts. The products are intended to be used in manual or automatic cleaning systems including, but not limited to, soak vats and tanks, ultrasonic cleaners, and cabinet washers.

USDA identified 16 different manufacturers producing 22 individual biobased parts wash solution products. These 16 manufacturers do not necessarily include all manufacturers of biobased parts wash solutions, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these

products are being used commercially. In addition, manufacturers and stakeholders identified four test methods used in evaluating products within this item. While there may be additional test methods, as well as performance standards, product certifications, and other measures of performance applicable to products within this item, those identified by manufacturers of products within this item are:

Test Methods

- ASTM D445, "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)";
- ASTM D446, "Standard Specifications and Operating Instructions for Glass Capillary Kinematic Viscometers";
- ASTM D877, "Standard Test Method for Dielectric Breakdown Voltage of Insulating Liquids Using Disk Electrodes"; and
- ASTM D92, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester".

USDA attempted to gather data on the potential market for biobased products within the Federal government using the procedure described in the section on "Chain and Cable Lubricants." These attempts were largely unsuccessful. USDA is aware of biobased parts wash solutions being used by at least one U.S. Air Force base that overhauls aircraft parts. However, Federal agencies or their services contractors routinely perform, and procure services that perform, the types of cleaning and maintenance activities that utilize parts wash solutions. Thus, there is a need for parts wash solutions. Designation of "parts wash solutions" will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life-cycle costs of biobased parts wash solutions was performed for two of the products using the BEES analytical tool. The impact values for these two parts wash solutions are presented in Table 9a. The environmental performance scores are presented in Table 9b and in Figure 9.

TABLE 9A—IMPACT VALUES FOR PARTS WASH SOLUTIONS

Environmental impact area	Units	Sample A	Sample B
Acidification	millimoles of hydrogen ion equivalents	2,870	1,960
Criteria Air Pollutants	micro Disability-Adjusted Life Years	1.12	0.594
Ecological Toxicity	grams of 2,4-dichloro-phenoxy-acetic acid	71.4	40.1
Eutrophication	grams of nitrogen equivalent	8.83	10.7
Fossil Fuel Depletion	megajoules of surplus energy	130	76.4
Global Warming	grams of carbon dioxide equivalents	7,560	5,100
Habitat Alteration	threatened and endangered species count	0	0
Human Health	grams of toluene equivalent	75,400	55,200
Indoor Air	grams of total volatile organic compounds	0	0
Ozone Depletion	grams of chloroflouro-carbon-11 equivalents	1.10E-05	2.03E-06
Smog	grams of nitrogen oxide equivalents	30.3	21.5
Water Intake	liters of water	92.6	117
Functional Unit	1 gallon		

TABLE 9B—SUMMARY OF BEES RESULTS FOR PARTS WASH SOLUTIONS—ENVIRONMENTAL PERFORMANCE SCORES

Environmental impact area	Sample A	Sample B
Total Environmental Performance Score ¹	0.0421	0.0278
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0003	0.0002
Ecological Toxicity (11%)	0.0096	0.005
Eutrophication (5%)	0.0023	0.0028
Fossil Fuel Depletion (5%)	0.0183	0.0108
Global Warming (16%)	0.0047	0.0032
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0052	0.0038
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0012	0.0009
Water Intake (3%)	0.0005	0.0007
Economic Performance (Life-cycle Costs (\$)) ²	10.43	16.99
First Cost	10.43	16.99
Future Cost (3.9%)	(³)	(³)
Functional Unit	gallon of parts wash solution	

¹ Numbers in parentheses indicate weighting factor.

² Costs are per functional unit.

³ For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

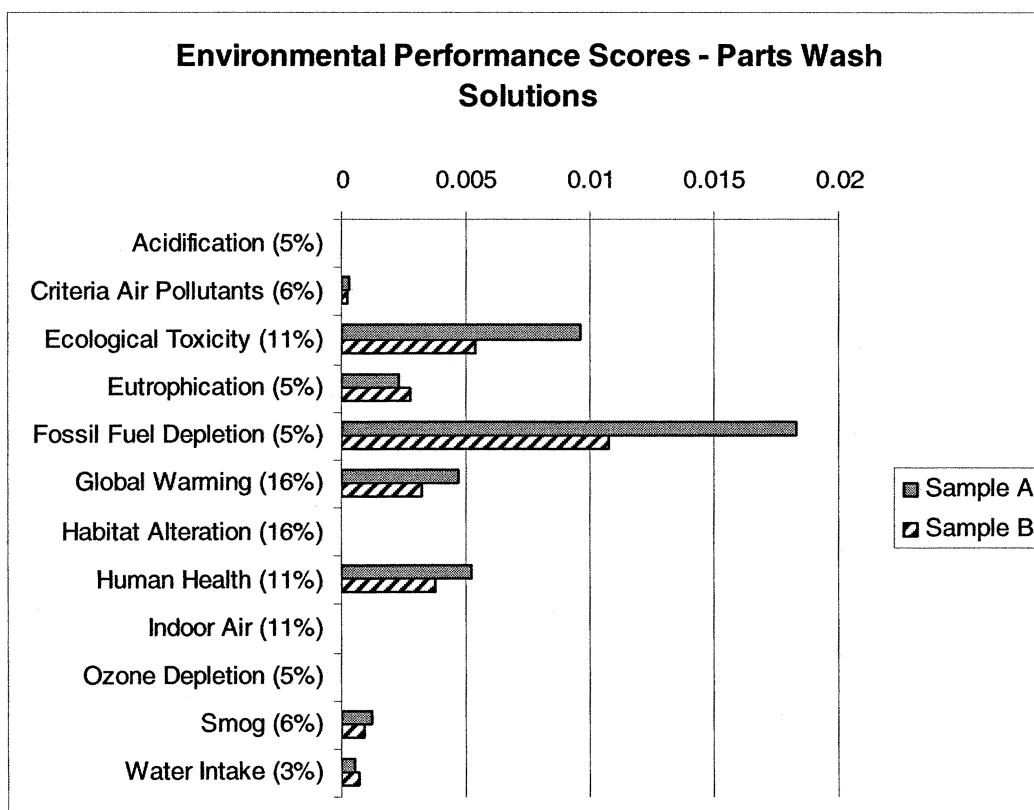


Figure 9. BEES Environmental Performance Scores for Parts Wash Solutions

As seen in Table 9b, the total environmental performance scores are 0.0278 and 0.0421 points per gallon of product. The life-cycle costs of the submitted parts wash solutions are \$10.43 and \$16.99 (present value dollars) per gallon of product.

C. Minimum Biobased Contents

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimus biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the

most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level three (3) percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA encourages procuring agencies to seek products with the highest

biobased content that is practicable in all of the proposed designated items. To assist the procuring agencies in determining which products have the highest biobased content, USDA will update the information in the biobased products catalog to include the biobased content of each product. Those products within each designated item that have the highest biobased content will be listed first and others will be listed in descending order. USDA is specifically requesting comments on the proposed minimum biobased contents of designated items and also requests additional data that can be used to re-evaluate the appropriateness of the proposed minimum biobased contents. As the market for biobased products develops and USDA obtains additional biobased content data, it will re-evaluate the established minimum biobased contents of designated items and consider raising them whenever justified.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated item.

1. Chain and Cable Lubricants

Nine of the 37 biobased chain and cable lubricants identified have been

tested for biobased content using ASTM D6866.² The biobased contents of these nine biobased chain and cable lubricants ranged from 80 percent to 100 percent, as follows: 80, 81, 86, 89, 96, 99, 100, 100, and 100.

The biobased contents for the tested products fall within a fairly narrow range with no significant breaks or gaps in the data. Therefore, USDA is proposing to set the minimum biobased content for this item at 77 percent, based on the product with a tested biobased content of 80 percent. The tested 80 percent value is adjusted to 77 percent to account for possible variability in the results of ASTM D6866, as discussed earlier.

2. Corrosion Preventatives

Ten of the 97 available biobased corrosion preventatives have been tested for biobased content using ASTM D6866. The biobased contents of these ten biobased corrosion preventatives ranged from 26 percent to 94 percent as follows: 26, 26, 56, 59, 61, 74, 85, 91, 92, and 94.

As seen, the tested biobased contents cover a wide range, from 26 percent to 94 percent, with a significant gap in the range between the 26 and 56 percent products and another between the 61 and 74 percent products. USDA reviewed the product information for the two products with 26 percent biobased content to determine if there was any justification for creating a subcategory within the item or for considering these products when setting the proposed minimum biobased content. USDA did not identify any performance or applicability features of these products that justified creating a subcategory or setting the minimum biobased content at a level that would include them. USDA next evaluated the available information for the group of products with biobased contents between 56 and 61 percent. USDA found that the manufacturer of the product with a biobased content of 61 percent indicates that their product meets the ASTM D665 Turbine Oil Rust Test. The manufacturers of the products with higher biobased contents have not indicated that their products meet this performance level. USDA does not have sufficient information to otherwise distinguish among the products in the

group of products whose biobased contents range from 56 to 61 percent. For these reasons, USDA is proposing to set the minimum biobased content for this item at 53 percent, based on the product with the lowest biobased content in the group of products with tested biobased contents of 56 to 61 percent.

3. Food Cleaners

Five of the 15 biobased food cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased food cleaners ranged from 56 percent to 98 percent as follows: 56, 61, 65, 76, and 98.

While this is a fairly wide range of biobased contents between the lowest biobased content and the highest biobased content among the tested products, the only significant gap in the data is between the 76 and the 98 percent products. Because most of the biobased contents are grouped towards the lower end of the range, USDA evaluated the available information for these products to determine if there was justification for creating separate subcategories for these products and for the one product with 98 percent biobased content. USDA found that there was not sufficient information on performance or applicability of the products to support the creation of subcategories. Therefore, USDA is proposing to set the minimum biobased content for this item at 53 percent, based on the product with the lowest biobased content in the group of products with tested biobased contents ranging from 56 to 65 percent.

4. Forming Lubricants

Five of the 13 biobased forming lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased forming lubricants ranged from 38 percent to 99 percent as follows: 38, 71, 85, 85, and 99.

Considering that there is a significant gap in the data points between the 38 and 71 percent biobased products, USDA evaluated the information available on these products to determine if there was justification for creating subcategories. USDA found that there was not sufficient information to create subcategories or to include the 38 percent biobased product when setting the minimum biobased content for the item. USDA found that the product with 71 percent biobased content was product claimed by its manufacturer to be biodegradable, while the manufacturers of the 85 and 99 percent biobased products did not make such

claims for their products. Because biodegradability is a desired feature, USDA is proposing to set the minimum biobased content for this item at 68 percent, based on the product with a tested biobased content of 71 percent.

5. Gear Lubricants

Eight of the 24 biobased gear lubricants identified have been tested for biobased content using ASTM D6866. The biobased contents of these eight biobased gear lubricants ranged from 4 percent to 100 percent as follows: 4, 61, 69, 81, 87, 89, 97, and 100.

Because there is a significant gap in biobased content between the products with 4 and 61 percent biobased content, USDA evaluated the 4 percent biobased product to determine if it possessed performance or applicability features that the other products did not. USDA found no performance or applicability characteristics that set this product apart from other products in this item. Therefore, USDA dropped this product from consideration in setting the minimum biobased content for this item.

The tested biobased content of the remaining six products, as shown above, ranged from 61 percent to 100 percent. USDA found that the manufacturers of the products with 61 and 69 percent biobased content have tested their products against numerous performance standards and that the remaining manufacturers do not claim to have done so. To ensure that products are available within this item that meet a range of performance standards, USDA is proposing to set the minimum biobased content for this item at 58 percent, based on the product with a tested biobased content of 61 percent.

6. General Purpose Household Cleaners

Nine of the 24 biobased general purpose household cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these nine biobased general purpose household cleaners ranged from 10 percent to 95 percent as follows: 10, 42, 54, 61, 72, 81, 82, 91, and 95.

The biobased content of the 10 percent product is substantially below the next lowest tested product (42 percent) and USDA found no performance or applicability characteristics that set the 10 percent product apart from other products in this item. Therefore, USDA dropped this product from consideration in setting the minimum biobased content for this item.

² ASTM D6866, "Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis," is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

The tested biobased contents of the remaining eight products, as shown above, ranged from 42 percent to 95 percent. Because this is a wide range of values, USDA considered the possibility of creating subcategories within this item. However, USDA does not have sufficient data on the performance and applicability of products within this item to support the creation of subcategories. USDA will continue to request product performance data and, if sufficient supporting data can be obtained, will consider creating subcategories within this item in the final rule. Because of the lack of supporting data for subcategorization and because there are no significant gaps in the biobased content of the eight products being considered, USDA is proposing to set the minimum biobased content for general purpose household cleaners at 39 percent, based on the product with a tested biobased content of 42 percent.

7. Industrial Cleaners

Thirty-two of the 121 biobased industrial cleaners identified have been tested for biobased content using ASTM D6866. The tested biobased contents for these 32 biobased industrial cleaners ranged from 2 percent to 100 percent, as follows: 2, 18, 18, 44, 49, 52, 61, 69, 73, 74, 77, 79, 80, 80, 82, 85, 91, 92, 92, 94, 95, 95, 96, 96, 97, 97, 98, and 100 (five products).

Because there is a significant gap between the 18 and the 44 percent biobased content products, USDA reviewed the information on the three products with tested biobased contents of 2 percent and 18 percent to determine if subcategorization was justified. USDA found no performance or applicability characteristics that set these products apart from other products in this item and, thus, they were eliminated from consideration for establishing the minimum biobased content.

The tested biobased contents of the remaining 26 products, as shown above, ranged from 44 percent to 100 percent. Because of the variability of the substrates to be cleaned and of the contaminants that are encountered on those substrates, USDA considered subcategorizing this item. However, at the present time USDA does not have sufficient data to segregate the various products into subcategories based on formulation or performance. As a result, USDA is proposing to maintain industrial cleaners as a single item. Because there are no significant gaps in the 26 biobased content data points being considered, USDA proposes to set the minimum biobased content for this item at 41 percent, based on the product

with a tested biobased content of 44 percent. If sufficient data become available after proposal, USDA will re-evaluate the possibility of subcategorizing this item.

8. Multipurpose Cleaners

Eighteen of the 62 biobased multipurpose cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these 18 biobased multipurpose cleaners ranged from 11 percent to 96 percent as follows: 11, 15, 25, 28, 31, 37, 45, 49, 59, 65, 69, 72, 78, 79, 84, 88, 96, and 96.

As with the industrial cleaners item, USDA considered subcategorizing this item based on factors such as product formulations, the variability of the substrates to be cleaned, and the contaminants that are encountered. However, at the present time USDA does not have sufficient data to segregate the various products into subcategories based on formulation or performance. As a result, USDA is proposing to maintain multipurpose cleaners as a single item. Although there are no large gaps in the range of biobased content data points, USDA considered the 10-point gap between the 49 and the 59 percent biobased content products to be sufficient for creating two groups of products; one with biobased contents of 49 percent and lower and one with biobased contents of 59 percent and higher. USDA evaluated the product information available for each product within the two product groups and was unable to identify performance or applicability features in the 49 percent and lower group that were not available in the 59 percent and higher group. Thus, USDA proposes to set the minimum biobased content for this item at 56 percent, based on the 59 percent biobased product from the group of products with the higher biobased contents. If sufficient data become available after proposal, USDA will re-evaluate the possibility of subcategorizing this item.

9. Parts Wash Solutions

Seven of the 22 biobased parts wash solutions identified have been tested for biobased content using ASTM D6866. The biobased contents of these seven biobased parts wash solutions ranged from 12 percent to 96 percent as follows: 12, 13, 68, 83, 89, 94, and 96.

Because there is a significant gap between the 13 and the 68 percent biobased content products, USDA reviewed the information on the products with tested biobased contents of 12 percent and 13 percent to determine if subcategorization was justified. USDA found no performance

or applicability characteristics that set these products apart from other products in this item and, thus, they were eliminated from consideration for establishing the minimum biobased content.

Because the overall range of the five remaining data points is fairly narrow, and the available product information does not support any subcategorization of this item, USDA is proposing to set the minimum biobased content for parts wash solutions at 65 percent, based on the product with a tested biobased content of 68 percent.

D. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, as proposed, procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect based on recognizing that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(a)(3), as amended by the FCEA of 2008, and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these items are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use

and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated items.

V. Where Can Agencies Get More Information on These USDA-Designated Items?

Information used to develop this proposed rule can be found in the technical support document, which can be accessed on the BioPreferred Web site, which is located at: <http://www.biopreferred.gov>. At the BioPreferred Web site, click on the Proposed and Final Regulations link on the left side of the page. At the next screen, click on the Supporting Documentation link under Round 5 Designated Items under the Proposed Regulations section.

Further, once the item designations in today's proposal become final, manufacturers and vendors voluntarily may make available information on specific products, including product and contact information, for posting by USDA on the BioPreferred Web site. USDA will periodically audit the information displayed on the BioPreferred Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Web site, agencies will also be able to obtain the voluntarily posted information on each product concerning: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in ASTM Standard D7075, "Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products."

USDA has linked the BioPreferred Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To

access this list, go to the BioPreferred Web site and click on the "Selling to Federal Government" tab and look for the DoD Specifications link.

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The 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 this Executive Order."

Today's proposed rule has been determined significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with today's proposed rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within today's designated items, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to quantify the economic impact of today's proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if costs are "unreasonable," the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's proposed rule. This assessment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in fossil energy-based products (including petroleum, coal and natural gas) purchased).

Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable costs.

1. Summary of Impacts

Today's proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, which may be adversely affected by today's proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Proposed Rule

The designation of these items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas; and to substitute products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Proposed Rule

Like the benefits, the costs of today's proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide

procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Procurement costs for Federal agencies may rise as they evaluate the availability and relative cost of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002, as amended by the FCEA of 2008, applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. Today's proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products

containing biobased materials. Thus, the economic impacts of today's proposed rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the items proposed for designation by today's proposed rule, the number is expected to be small. Because biobased products represent an emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by today's proposed rule is not expected to be substantial.

After considering the economic impacts of today's proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities. Today's proposed rule, therefore, does not require a regulatory flexibility analysis.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies may increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed 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 government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect "one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

J. Government Paperwork Elimination Act Compliance

USDA is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to GPEA compliance related to this rule, please contact Shana Love at (202) 205-4008.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

Subpart B

2. Add §§ 2902.43 through 2902.51 to subpart B to read as follows:

Sec.	
2902.43	Chain and cable lubricants.
2902.44	Corrosion preventatives.
2902.45	Food cleaners.
2902.46	Foaming lubricants.
2902.47	Gear lubricants.
2902.48	General purpose household cleaners.
2902.49	Industrial cleaners.
2902.50	Multipurpose cleaners.
2902.51	Parts wash solutions.

§ 2902.43 Chain and cable lubricants.

(a) *Definition.* Products designed to provide lubrication in such applications as bar and roller chains, sprockets, and wire ropes and cables. Products may also prevent rust and corrosion in these applications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased chain and cable lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased chain and cable lubricants.

§ 2902.44 Corrosion preventatives.

(a) *Definition.* Products designed to prevent the deterioration (corrosion) of metals.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased corrosion preventatives. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased corrosion preventatives.

§ 2902.45 Food cleaners.

(a) *Definition.* Anti-microbial products designed to clean the outer layer of various food products, such as fruit, vegetables, and meats.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased food cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased food cleaners.

§ 2902.46 Forming lubricants.

(a) *Definition.* Products designed to provide lubrication during

metalworking applications that are performed under extreme pressure. Such metalworking applications include tube bending, stretch forming, press braking, and swaging.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 68 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased forming lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased forming lubricants.

§ 2902.47 Gear lubricants.

(a) *Definition.* Products, such as greases or oils, that are designed to reduce friction when applied to a toothed machine part (such as a wheel or cylinder) that meshes with another toothed part to transmit motion or to change speed or direction.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased gear lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of gear lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased

ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased gear lubricant products within this designated item can compete with similar gear lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

§ 2902.48 General purpose household cleaners.

(a) *Definition.* Products designed to clean multiple common household surfaces. This designated item does not include products that are formulated for use as disinfectants. Task-specific cleaning products, such as spot and stain removers, upholstery cleaners, bathroom cleaners, glass cleaners, etc., are not included in this item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 39 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased general purpose household cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of

biobased general purpose household cleaners.

§ 2902.49 Industrial cleaners.

(a) *Definition.* Products used to remove contaminants, such as adhesives, inks, paint, dirt, soil, and grease, from parts, products, tools, machinery, equipment, vessels, floors, walls, and other production-related work areas. The cleaning products within this item are usually solvents, but may take other forms. They may be used in either straight solution or diluted with water in pressure washers, or in hand wiping applications in industrial or manufacturing settings, such as inside vessels. Task-specific cleaners used in industrial settings, such as parts wash solutions, are not included in this definition.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 41 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased industrial cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased industrial cleaners.

§ 2902.50 Multipurpose cleaners.

(a) *Definition.* Products used to clean dirt, grease, and grime from a variety of items in both industrial and domestic settings. This designated item does not include products that are formulated for use as disinfectants.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 56 percent, which shall be based

on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased multipurpose cleaners.

§ 2902.51 Parts wash solutions.

(a) *Definition.* Products that are designed to clean parts in manual or automatic cleaning systems. Such systems include, but are not limited to, soak vats and tanks, cabinet washers, and ultrasonic cleaners.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 65 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased parts wash solutions. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased parts wash solutions.

Dated: October 16, 2008.

Boyd Rutherford,

Assistant Secretary for Administration, U.S. Department of Agriculture.

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E8-18312]

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published 9-26-08 [FR E8-
22717]

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23139]

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E8-22741]

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E8-16262]

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[FR E8-22720]

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17270]

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comments due by 10-30-
08; published 9-30-08 [FR
E8-22940]

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08; published 9-30-08 [FR
E8-22741]

Risk-Based Capital Guidelines;
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08; published 7-29-08 [FR
E8-16262]

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 "PLUS" (Public Laws
Update Service) on 202-741-
6043. This list is also
available online at [http://
www.archives.gov/federal-
register/laws.html](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](http://www.gpoaccess.gov/plaws/index.html). Some laws may
not yet be available.

H.R. 3511/P.L. 110-439

To designate the facility of the
United States Postal Service
located at 2150 East Hardtner
Drive in Urania, Louisiana, as
the "Murphy A. Tannehill Post
Office Building". (Oct. 21,
2008; 122 Stat. 5003)

H.R. 4010/P.L. 110-440

To designate the facility of the
United States Postal Service
located at 100 West Percy
Street in Indianola, Mississippi,
as the "Minnie Cox Post
Office Building". (Oct. 21,
2008; 122 Stat. 5004)

H.R. 4131/P.L. 110-441

To designate a portion of
California State Route 91
located in Los Angeles
County, California, as the

“Juanita Millender-McDonald Highway”. (Oct. 21, 2008; 122 Stat. 5005)

H.R. 6558/P.L. 110–442

To designate the facility of the United States Postal Service located at 1750 Lundy Avenue in San Jose, California, as the “Gordon N. Chan Post Office Building”. (Oct. 21, 2008; 122 Stat. 5007)

H.R. 6681/P.L. 110–443

To designate the facility of the United States Postal Service located at 300 Vine Street in New Lenox, Illinois, as the “Jacob M. Lowell Post Office Building”. (Oct. 21, 2008; 122 Stat. 5008)

H.R. 6834/P.L. 110–444

To designate the facility of the United States Postal Service located at 4 South Main Street in Wallingford, Connecticut, as the “CWO Richard R. Lee Post Office Building”. (Oct. 21, 2008; 122 Stat. 5009)

H.R. 6847/P.L. 110–445

To designate the facility of the United States Postal Service located at 801 Industrial Boulevard in Ellijay, Georgia, as the “First Lieutenant Noah Harris Ellijay Post Office Building”. (Oct. 21, 2008; 122 Stat. 5010)

H.R. 6902/P.L. 110–446

To designate the facility of the United States Postal Service located at 513 6th Avenue in Dayton, Kentucky, as the “Staff Sergeant Nicholas Ray Carnes Post Office”. (Oct. 21, 2008; 122 Stat. 5011)

H.R. 6982/P.L. 110–447

To designate the facility of the United States Postal Service located at 210 South Ellsworth Avenue in San Mateo, California, as the “Leo J. Ryan Post Office Building”. (Oct. 21, 2008; 122 Stat. 5012)

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